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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 46.

THE CITY OF NEW ORLEANS, PETITIONER,

vs.

JOHN FISHER, TUTOR, &c., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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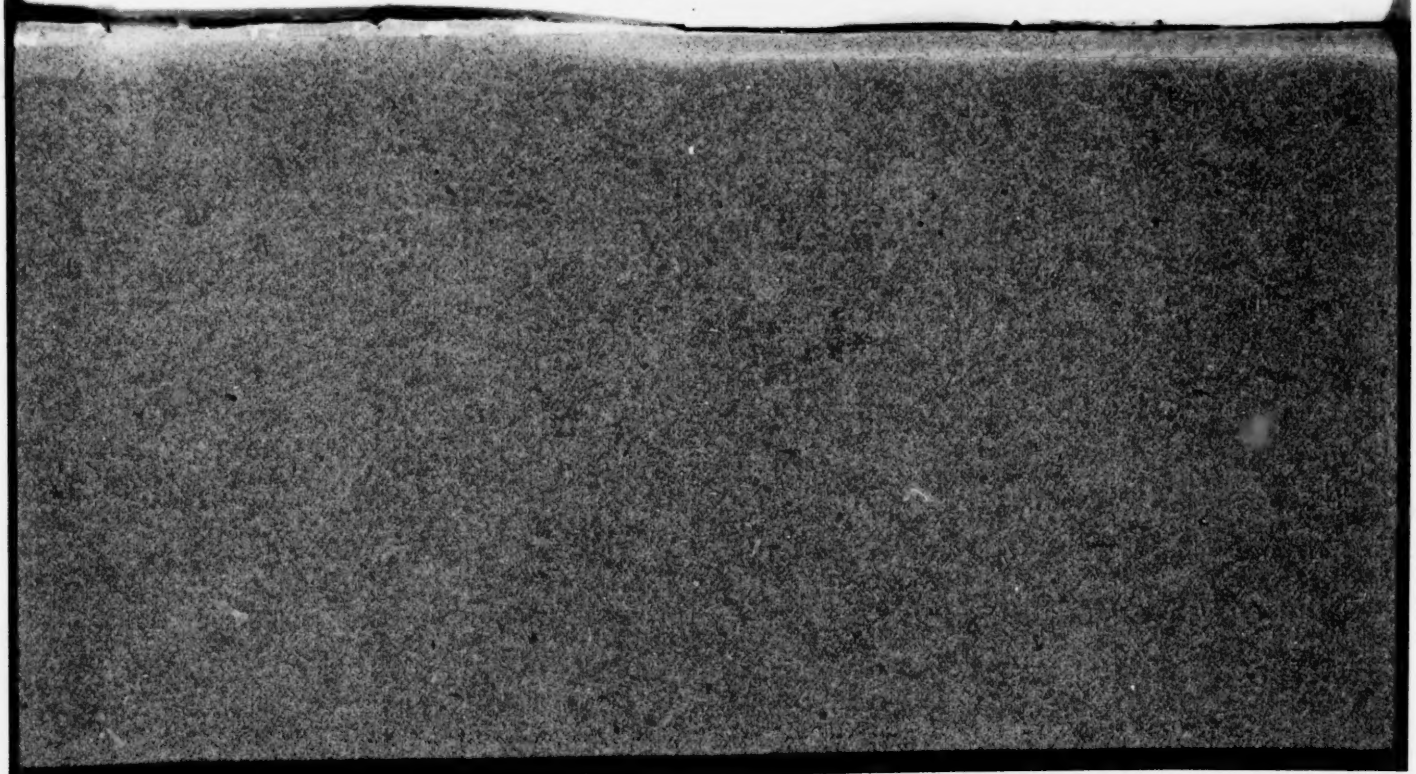

(17,391.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 281.

THE CITY OF NEW ORLEANS, PETITIONER,

vs.

JOHN FISHER, TUTOR, &c., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a UNITED STATES OF AMERICA,
Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun on the third Monday of November, 1898, and held in the court-room of said court in the city of New Orleans.

Before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit; the Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable Aleck Boarman, United States district judge for the western district of Louisiana.

THE CITY OF NEW ORLEANS
vs.
JOHN FISHER, Tutor, etc., ET ALS. } No. 747.

Be it remembered, that heretofore, to wit, on the 22d day of July, 1898, a transcript of the record of the above-styled cause from the circuit court of the United States for the eastern district of Louisiana, was filed in the office of the clerk of said United States circuit court of appeals, in the words and figures following, to wit:

1 *Bill of Complaint.*

Filed May 11, 1896.

MRS. M. M. FISHER
versus
CITY OF NEW ORLEANS ET AL. } No. 12516.

To the hon. judges of the circuit court of the United States for the eastern district of Louisiana:

Mrs. M. M. Fisher herein joined and authorized by her husband, M. M. Fisher, of Cuba, and citizens of Kingdom of Spain, brings this her bill against the City of New Orleans, a corporation created by the laws of Louisiana and a citizen thereof:

And thereupon your oratrix complains and says:

That she recovered a judgment in this hon. court against the board of school directors, a corporation created by the laws of the State of Louisiana and a citizen thereof, in the sum of more than ten thousand dollars, as more fully appears by the record of said suit;

That your oratrix obtained two other judgments against the same school board, before the civil district court for the parish of Orleans, amounting in the aggregate to many thousand dollars;

That all of said judgments are now final; that they are made payable out of the school taxes levied by the city of New Orleans, prior to 1879.

Your oratrix avers that the school taxes out of which said judgments have been made payable, is a trust fund levied by the city of New Orleans, for the purpose of paying the expenses of the public schools of the city of New Orleans.

1st. That the city of New Orleans has failed to collect the said taxes punctually and that it was through her fault and negligence that the same remains uncollected and by reason of her neglect she has become liable for the amount of taxes yet remaining uncollected.

2nd. Your oratrix further complains and says that said taxes, under the law, carried interest at the rate of ten per cent. per annum and that the city of New Orleans has never paid to the school board any of the interest due on said taxes, but she has misapplied and diverted the same to other unlawful uses.

3rd. Your oratrix further avers that the school board created the obligation against said school taxes, by virtue of contracts which were legally entered into and your oratrix was protected by the Constitution of the United States from any impairment of her contract.

That in violation of this constitutional right, the State of Louisiana passed act 82 of 1884, which directed that the property of delinquent tax-payers should be sold for what it would bring and that all taxes due thereon should by virtue of said sale be cancelled.

That by reason of said law, the city of New Orleans allowed the property on which the school taxes were due to be sold for State taxes, and she caused the city taxes, including the school taxes, to be cancelled; that she was thus guilty, 1st. As a delinquent trustee for not having enforced the collection of the said tax; and 2d. For having failed to protect the interest of your oratrix at said State tax sale; that the cancellations thus made amount to many thousands of dollars.

4th. That the said city of New Orleans at various times passed ordinances cancelling and annulling the said taxes and remitting the interest thereon;

That your oratrix is unable to give the exact amount of each kind of violations of her obligations by the trustee, and it is absolutely necessary to make the city of New Orleans account for the various amounts which have been lost to your oratrix through the unfaithfulness of said trustee.

That the board of school directors to whom the city of New Orleans should account have refused to demand such an account and will continue so to do and your oratrix would be left without a remedy.

That the fund which the city of New Orleans administers seems now to be insufficient to satisfy the demands of all the creditors who are entitled to be paid out of the same.

Your oratrix further avers that her judgments are made directly payable out of the school taxes levied prior to 1879 and she has

an equitable lien there against enforceable before a court of equity.

She further avers that under the law her certificates which are merged in her judgments have been under the law, received by the city of New Orleans, directly in payment of the school taxes without the intervention of the board of school directors.

That for those reasons your oratrix brings her bill against the City of New Orleans and the board of directors of the city schools of New Orleans for an account.

3 Your oratrix brings this bill for herself and all parties similarly situated who are willing to appear and contribute to the costs thereof, they being too numerous to be made parties hereto.

May it please your honors to grant unto your oratrix a writ of subpœna to be directed to the City of New Orleans, through its mayor and to the school board of the city schools of New Orleans, E. B. Kruttschnitt thereby commanding them and each of them, on the first Monday in June, 1896, under the penalties therein to be limited personally to appear before this hon. court then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, abide, perform such further orders, direction and decree that this hon. court may make, and to give a full, fair and perfect account of all the school taxes collected by the city of New Orleans for the years 1873, 1874, 1875, 1876, 1877 and 1878; of all the interest received thereon by said city and never accounted for, of all the taxes which were not collected for want of proper enforcement, and which have since been cancelled both sales made by the State tax collectors and by ordinance adopted by the city council; and your oratrix further prays for all general and particular relief as shall seem agreeable to equity and good conscience.

(Signed) LOUQUE & POMES, *Solicitors.*

Appearance of Defendant.

Extract from Order Book.

JUNE 1ST, 1896.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

The City of New Orleans through S. L. Gilmore, city attorney, has this day entered its appearance to the bill of complaint.

Supplemental Bill.

Filed August 24, 1896.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

To the hon. the circuit court of the United States for the eastern district of Louisiana:

Mrs. M. M. Fisher, duly authorized by her husband, M. M.
4 Fisher, a citizen of the Kingdom of Spain, brings this her supplemental bill against the City of New Orleans, a corporation duly created by the laws of Louisiana, and a citizen of said State, and within the jurisdiction of this hon. court.

Your oratrix avers that the city of New Orleans, has at various times seized for the taxes due, for the years during which her claim arose, a number of houses and lots and has purchased the same, in satisfaction of the taxes due and that a resulting trust has under the law followed the said property and your oratrix is entitled to have the value of said real estate realized upon and the rents accounted for by the city of New Orleans.

Your oratrix is unable to give an exact statement of the houses and property so purchased by the city of New Orleans, but she avers that the same largely exceeds thirty thousand dollars; that said city allows said property to go to waste and your oratrix avers that she has a statutory lien on all of said property under the laws of the United States, and that she is entitled to the appointment of receiver to take charge of same and realize under order of court.

That the acts complained of are contrary to equity and your oratrix has no rights save before the equitable jurisdiction of this hon. court.

Your oratrix brings this, her bill, for her own benefit and for all other persons in her same situation.

May it please your honors to grant unto your oratrix a receiver to take charge of the property purchased by the city of New Orleans for the taxes 1874 to 1879 inclusive, with such powers as receivers generally possess and more especially to be mentioned in the order appointing him and your oratrix further prays that this supplemental bill be filed and that the City of New Orleans through the mayor thereof be ordered to show cause on such day as this hon. court may fix why the prayer herein for receiver should not be granted and your oratrix prays for general relief.

(Signed) LOUQUE & POMES, *Solicitors.*

Chas. Louque being duly sworn says that the facts above mentioned are true and that Mrs. M. M. Fisher is now in the island of Cuba.

(Signed) CHAS. LOUQUE.

Sworn to and subscribed before me this 21st day of August, 1896.

(Signed) WILLIAM ARDILL, *Not. Pub.*

Order.

Let this supplemental bill be filed and let the City of New Orleans show cause on Saturday the 29th of August, 1896, at 11 o'clock a. m., why a receiver should not be appointed as prayed for.

(Signed) CHARLES PARLANGE, *Judge.*

August 22nd, 1896.

On Saturday, Aug. 29, 1896, both parties through counsel appeared before me, and, on motion of defendant, the preliminary hearing was continued to Sept. 5, 1896, on which day the matter was argued by counsel for both parties and by consent the matter of preliminary injunction and receivership was continued without date to be refixed for argument at some future day on motion of either party.

New Orleans, La., Sept. 5th, 1896.

(Signed) CHARLES PARLANGE, *Judge.*

Demurrer to Original Bill.

Filed Aug. 28th, 1896.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

In Equity.

The demurrer of the City of New Orleans, herein appearing by A. Brittin, acting mayor, to the original bill of complaint of Mrs. M. M. Fisher, complainant.

This defendant, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein set forth does demur to said bill and for cause of demurrer shows that complainant has not by her said bill made such a case as entitles her to the relief prayed as to the matters contained in said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in said bill this defendant does demur thereto and prays the judgment of this honorable court whether defendant shall be compelled to make any further or other answer to said bill, and defendant humbly prays to be hence dismissed with her reasonable costs in this behalf sustained.

(Signed) JAMES J. McLOUGHLIN,
Ass't City Attorney, Solicitor for Defendant.

6 *Affidavit.*

UNITED STATES OF AMERICA,
Parish of Orleans, State of Louisiana, City of New Orleans.

A. Brittin, acting mayor of The City of New Orleans, defendant in above-entitled cause, being duly sworn, says that the foregoing demurrer is not interposed for delay.

(Signed) ABRAHAM BRITTIN.

Sworn to and subscribed before me this 27th day of August, 1896.

(Signed) P. ALPH. RABOUIN, *Not. Pub.*

I certify that, in my opinion, the foregoing demurrer is well founded in point of law.

(Signed) JAMES J. McLOUGHLIN, *Of Counsel.*

Entry of Notice of Filing Demurrer.

Extract from Chancery Order Book.

FRIDAY, *August 28th*, 1896.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

The City of New Orleans, through James J. McLoughlin, assistant city attorney, has this day filed a demurrer to the original bill.

Demurrer to Supplemental Bill.

Filed August 28th, 1896.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

In Equity.

The demurrer of the City of New Orleans, herein appearing by A. Brittin, acting mayor, to the supplemental bill of complaint of Mrs. M. M. Fisher, complainant.

This defendant, by protestation, not confessing all or any of the matters and things in the said complainant's bill con-
7 tained to be true in such manner and form as the same are therein set forth, does demur to said bill and for cause of demurrer shows that complainant has not by her said bill made such a case as entitles her to the relief prayed as to the matters contained in said bill or any of such matters.

Wherefore and for divers other good causes of demurrer appearing in said bill this defendant does demur thereto and prays

the judgment of this honorable court whether defendant shall be compelled to make any further or other answer to said bill, and defendant humbly prays to be hence dismissed with her reasonable costs in this behalf sustained.

(Signed) JAMES J. McLOUGHLIN,
Ass't City Attorney, Solicitor for Defendant.

Affidavit.

UNITED STATES OF AMERICA,
Parish of Orleans, State of Louisiana, City of New Orleans.

A. Brittin, acting mayor of The City of New Orleans, defendant in above-entitled cause, being duly sworn, says that the foregoing demurrer is not interposed for delay.

(Signed) ABRAHAM BRITTIN.

Sworn to and subscribed before me this 27th day of August, 1896.

(Signed) P. ALPH. RABOUIN, *Not. Pub.*

I certify that, in my opinion, the foregoing demurrer is well founded in point of law.

(Signed) JAMES J. McLOUGHLIN, *Of Counsel.*

Entry of Notice of Filing Demurrer.

Extract from Chancery Order Book.

FRIDAY, *August 28th*, 1896.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

The City of New Orleans through James J. McLoughlin, assistant city attorney, has this day filed a demurrer to the amended bill.

8

Demurrer Set Down for Argument.

Extract from Chancery Order Book.

NOVEMBER 10TH, 1896.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

Now comes Mrs. M. M. Fisher, complainant, through her solicitors, Louque & Pomes, and sets down for argument the demurrer to the original bill and the demurrer to the supplemental bill filed herein.

Order Fixing Demurrers.

Extract from the Minutes.

NEW ORLEANS, MONDAY, *December 14th*, 1896.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, judge.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

On motion of Charles Louque, of counsel for complainant, it is ordered that the demurrer be fixed for trial the 19th day of December, 1896, at 11 a. m.

Hearing and Submission of Demurrer.

Extract from Minutes.

November Term, 1896.

NEW ORLEANS, *January 9th*, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, judge.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

This cause came on to be heard upon the demurrer filed by the defendant.

9 J. J. McLoughlin, assistant city attorney, appearing in support of the demurrer.

Charles Louque for the complainant.

And was argued and submitted—counsel to file briefs.

Pro Confesso against Board of Directors of Public Schools.

Extract from Chancery Order Book.

WEDNESDAY, *January 13th*, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

On motion of Charles Louque, solicitor for complainant, and suggesting that although the board of school directors of the city schools of New Orleans was served with subpœna herein, more than 20 days before the rule day in June, 1896, it has not entered any appearance herein nor filed any demurrer, plea or answer.

It is ordered that the bill of complaint herein be in all things taken for confessed against the said board of school directors of the city schools of New Orleans.

Case Set Down for Further Argument.

Extract from Minutes.

November Term, 1896.

NEW ORLEANS, MONDAY, *February 15th*, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, judge.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

Ordered that this cause be set down for further argument by preference on Saturday, February 20th, 1897, solicitors for both parties being here present in court this day and notified hereof.

Submission of Demurrer.

Extract from Minutes.

November Term, 1896.

NEW ORLEANS, FRIDAY, *February 26th*, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, judge.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

This cause came on this day to be further heard upon the demurrers filed by the City of New Orleans and was argued by the solicitors for the respective parties and submitted, when the court took same under consideration.

Decree Overruling Demurrers.

Extract from Minutes.

November Term, 1896.

NEW ORLEANS, MONDAY, *March 1st*, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, judge.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

This cause came on to be heard at this term upon the demurrers filed by the City of New Orleans to the original and supplemental bills of complaint herein and after argument by the solicitors for the respective parties was submitted.

Whereupon and upon due consideration thereof it is ordered that the said demurrers be and the same are hereby overruled.

11 *Motion for Time to Answer.*

Extract from Minutes.

November Term, 1896.

NEW ORLEANS, WEDNESDAY, *March 3d*, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, judge.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

On motion of Samuel L. Gilmore, city attorney, and James J. McLoughlin, assistant city attorney, solicitors for defendant, and on suggestion to this hon. court that a delay of two weeks is required by counsel for defendant to prepare and file an answer herein—

It is ordered that a delay of ten days be granted defendant within which to file an answer herein.

Answer of City of New Orleans.

Filed March 12th, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

The answer of The City of New Orleans, the defendant, to the original and supplemental bills of complaint of Mrs. M. M. Fisher and her husband, complainants.

To the honorable the judges of the United States circuit court for the fifth circuit and eastern district of Louisiana:

This defendant now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors and uncertainties and imperfections in the said bills contained, and not waiving, but especially reserving the rights under the demurrer hereinbefore filed by this defendant herein, for answer to said bills or to so much thereof as this defendant is advised it is material or necessary for it to make answer, answering, says:

I.

Defendant admits that oratrix recovered judgments against
12 the board of school directors, a corporation of the State of Louisiana, and a citizen thereof, both in this honorable court and in the civil district court for the parish of Orleans as is set forth in oratrix's bill of complaint and records annexed thereto and referred to therein.

II.

Defendant admits that all of said judgments are now final and are payable as decreed and provided for in the said judgments.

III.

Defendant denies that the school taxes out of which said judgments have been made payable is a trust fund levied by the city of New Orleans for the purpose of paying the expenses of the public schools of said city.

IV.

Defendant denies that it has ever failed to collect said taxes punctually, and denies that any of the same remain uncollected, and denies that if any of the same remain uncollected, they so remain by reason of any negligence on the part of this defendant, and denies that defendant is liable at all for the amount of any such taxes yet remaining uncollected, if any such there be.

V.

Defendant admits that the city of New Orleans has never paid to the school board any interest which she may have collested on any back taxes, and defendant denies that any such interest, if same has ever been collected, was due to the school board, and defendant denies that she has ever misapplied or diverted to unlawful uses any interest that she may have collected from delinquent tax-payers or back taxes, and defendant avers and shows that by express provision of law all interest which she may collect on any back taxes is especially set aside for certain purposes and cannot by her be used for school purposes or for any other purpose than that commanded by law.

VI.

Defendant denies that the school board created the obligations against the school taxes, set forth in oratrix'- bill of complaint, by virtue of any contracts legally entered into, and denies that the oratrix has any right to invoke the protection of the Constitution of the United States herein, and denies that the provisions of the same regarding impairment of contract have been in any manner violated by this defendant.

VII.

Defendant denies that act No. 82 of 1884 was passed in violation of any constitutional rights of oratrix in the premises, and
13 defendant declares that whatever was done by the State of Louisiana in passing the said act, if it was done, was within the legislative authority, and the said taxes and legislative provisions were subject to change, amendment and repeal by the same authority which created them, and defendant shows and avers that the city of New Orleans had no authority or control over the action of the legislature in the premises.

VIII.

Defendant denies that the city of New Orleans allowed any property on which school taxes were due, to be sold for said taxes, and denies that she caused the city taxes, including the school taxes, to be cancelled.

IX.

Defendant denies that she has been or is guilty as a delinquent trustee for not having enforced the collection of said taxes, denies that she ever was a trustee in the matter, denies that she ever failed to enforce the collection of any taxes which it was her duty to enforce, denies that it ever was her duty to protect the interests, if any she had, of oratrix, at said tax sales, denies that oratrix had any such interest and denies that there were any such tax sales.

X.

Defendant denies that any cancellations amounting to many thousands of dollars, or to any amount, were made by reason of said sales as set forth in oratrix' bill of complaint.

XI.

Defendant denies that the city of New Orleans passed ordinances cancelling and annulling any taxes, or remitting any interest thereon, but if any taxes were so cancelled or remitted, defendant avers the same was done by authority of law or by judgment of a competent court. Defendant denies that there was or is any obligation on the part of the city to account either to the school board or to the oratrix for any taxes, moneys or appropriations such as are set forth in oratrix' bill of complaint.

XII.

Defendant denies that it was the duty of the school board to call this defendant to account, and denies that the school board or the oratrix herein has any cause of action against this defendant for such an account. Defendant denies that there was any privity between the school board and this defendant, or between Mrs. Fisher and this defendant. And further answering defendant says, that if any such cause of action for an accounting ever did exist
14 in favor of said school board or of said oratrix, the same was effective and executory in the year 1880, and became actionable and exigent in the year 1880, and in the years following the year 1873 up to 1879 inclusive. That said action of accounting was personal to said school board and could only be exercised and availed of by the said school board, which action is prescribed by the lapse of ten years from and after each of the said years, and that oratrix has no right or cause of action in the premises.

XIII.

Defendant denies that there is any fund now administered, or which ever was administered by the city of New Orleans, derived either from appropriations, taxes, or money said to be due said school board, and denies that if there is or was any such fund, that the said school board or oratrix has any rights in the premises.

XIV.

Defendant admits that the judgments of oratrix are payable as stipulated in said judgments, but denies that oratrix has any equitable lien enforceable against the city of New Orleans before a court of equity by reason thereof.

XV.

Defendant denies that under the law were the services which she alleges have been merged in her judgments ever received by the city of New Orleans directly in payment of the school taxes without the intervention of the board of school directors.

XVI.

Defendant denies that the city of New Orleans has at various times for the taxes due for the years during which oratrix' claim is alleged to have arisen, sold for taxes and purchased in satisfaction thereof a number of houses and lots, and particularly, denies that any school taxes are due and payable on any such property, if any such has been bought, and denies that if any such property has been bought, any resulting trust has, under the law, followed said property, and denies that oratrix would in any event, be entitled to have the value of said real estate realized upon, or the rents accounted for by the city of New Orleans.

XVI.

Defendant denies that the city of New Orleans purchased houses and properties, as charged in oratrix' supplemental bill of complaint to the extent of $30,000, or any part thereof.

XVII.

Defendant denies that the city has any property upon which oratrix has any statutory lien under any law of the United
15 States, and denies that she has allowed to go to waste any property of any description which is or has been in her possession, and denies that oratrix is entitled to have a receiver appointed to take charge of any property owned or held by this defendant.

XVIII.

Defendant denies that any acts which have been done by her are contrary to equity and defendant denies that the oratrix has any right or reason to invoke the equitable jurisdiction of this honorable court.

Further answering, defendant shows that there does not appear in the bills of complaint of oratrix herein any allegation of any indebtedness by the city of New Orleans to the said school board, and that without having made said allegation oratrix is without right to proceed against this defendant herein.

Further answering, defendant shows and avers, that it has been decreed in the judgments of oratrix herein sued on, and in other suits of a similar nature, by other parties, against the city of New Orleans, that oratrix and such other complainants have no cause of action against the city of New Orleans on account of the claims of the character sued on in the judgments hereinbefore referred to.

Defendant denies that there is any other matter, cause or thing in the said complainant's original and supplemental bills of complaint, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied; and this defendant, considering the premises aforesaid, humbly prays this honorable court that all the demands contained in the original and supplemental bills of complaint of oratrix herein be rejected and dis-

missed; and defendant humbly prays to be hence dismissed with reasonable costs and charges in its behalf most wrongfully sustained.

And defendant prays for all special, equitable and general relief and orders herein, as this honorable court may deem just, proper and equitable herein.

(Signed) JAMES J. McLOUGHLIN,
Assistant City Attorney, Solicitor for Defendant.
(Signed) W. C. FLOWER, *Mayor.*

Walter C. Flower, being duly sworn, deposes and says that he is mayor of The City of New Orleans, the defendant herein; that he has read the foregoing answer and knows the contents thereof,
16 and that the same is true to his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) W. C. FLOWER, *Mayor.*

Sworn to and subscribed before me this 11th day of March, 1897.
(Signed) P. ALPH. RABOUIN, *Not. Pub.*

Entry of Filing of Answer in Chancery Order Book.

Extract from Chancery Order Book.

FRIDAY, *March 12th*, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

The City of New Orleans through J. J. McLoughlin, solicitor, has this day filed the answer to the original and supplemental bills of complaint.

Motion to Set Aside Pro Confesso as to Board of School — and Order.

Extract from Minutes.

November Term, 1896.

NEW ORLEANS, FRIDAY, *March* 12, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, judge.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

On motion of James J. McLoughlin, assistant city attorney, solicitor for defendants herein, and on suggesting to the court that plaintiff has consented, in writing, to the same,

It is ordered that the *pro confesso* herein entered on the — day of

——, 1896, against the Board of School Directors of the City of New Orleans be set aside and the said school board be allowed to file answer herein.

17 *Rule to Make Reference to Master.*

Filed March 15th, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

On motion of Chas. Louque and Emile Pomes, solicitors for complainants and on suggesting to the court that the answers of the defendants have been filed and that this cause should be referred to a master to report thereon, after examining the accounts of defendant The City of New Orleans,

It is ordered by the court that defendant, through J. J. McLoughlin, Esq., their solicitor, do show cause on Saturday, the 20th of March, 1897, at 11 o'clock, why this cause should not be referred to a master of this honorable court to take a full, true, fair and perfect account of all the funds, principal and interest, received by the city of New Orleans from the school taxes levied in 1871—1873—1874—1875—1876—1877 and 1878;—of all interest remitted illegally; or all properties purchased for said taxes as more fully prayed for in the bill and supplemental bill filed herein, and to that effect produce before said master all books, papers, documents to be examined and which may be necessary or proper, in the premises.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., March 15th, 1897, and on the 16th day of March, 1897, I served a true copy of the within rule on the City of New Orleans through J. C. Gilmore, city att'y, by handing the same to him (in) person.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

Answer of School Board.

Filed March 16th, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516. In Equity.

To the honorable the judges of the United States circuit court for the fifth circuit and eastern district of Louisiana:

18 Now into this honorable court comes the Board of Directors of the Public Schools of New Orleans, a corporation of the State of Louisiana, and having set aside the *pro confesso* taken by

the oratrix against the respondent, pleads and answers herein to the original and supplemental bills of complaint herein, as follows, to wit:

That it is true oratrix recovered judgments against respondent in this honorable court, and in the civil district court for the parish of Orleans, as stated in her bills of complaint herein, which said judgments are final and executory as decreed therein.

But this respondent denies that the city of New Orleans is indebted to respondent in any manner, form or degree for monies alleged to be due this respondent by the said city for taxes levied for school purposes or for appropriations made by said city for the benefit of respondent or the public schools of New Orleans, prior to and inclusive of the year 1879.

And respondent says that if there should be any moneys, appropriations or taxes due this respondent by the city of New Orleans up to and including the year 1879, for the purpose of carrying on the public schools of this city, respondent denies that any such indebtedness, monies or taxes form a trust fund as alleged and set out in the bills of complaint herein.

And this respondent shows and avers that in regard to all appropriations made by the said city for the benefit of the public schools of New Orleans, and to such taxes as may have been levied according to law by said city for school purposes, that in every respect and in full compliance with her legal obligations the city of New Orleans carried out and executed her said obligations and responsibilities fully in the premises and satisfactorily to this respondent, and this respondent has not today, nor has it ever had, any recourse against the city of New Orleans in the premises.

That there was no necessity at any time for the exercise of any such cause of action against the city of New Orleans, nor was there reason therefor, because, as hereinbefore stated and set forth, and so respondent avers, the city of New Orleans complied faithfully and promptly and satisfactorily with all obligations and responsibilities assumed and contracted by it in the premises aforesaid, up to the year 1879, inclusive, and this respondent avers that the city of New Orleans is not now, nor has it been for over 15 years anterior to January 1, 1897, indebted to this respondent in any manner or to any extent.

And further answering, respondent says, that as to matters and things charged against the city of New Orleans, and to which respondent was not a party, that this respondent is ignorant thereof, and denies on its part any knowledge of or consent to the
19 said matters and things so charged, but this respondent shows and avers that as hereinbefore averred, the city of New Orleans has fully, faithfully and promptly accounted for all such appropriations as may have been made by the said city for the benefit of the public schools of New Orleans, or for monies due or taxes levied up to 1879 inclusive, for such purposes, and it is not true that this respondent has failed or refused to demand such accounting; that as hereinbefore averred, respondent shows that said accounting was unnecessary, because said city promptly and

fully accounted for and paid over to respondent all such appropriations, monies and taxes aforesaid.

And respondent further shows and avers that if any such cause of action of account ever existed, it was effective and executory in the year 1880, and that thereafter, in default of any action taken by this respondent in the premises, said cause of action ceased to exist and become operative after ten years from said date, and that the operation of any such cause of action as now attempted by oratrix, is barred and prescribed by the prescription of ten years.

And further answering, respondent denies that there is any fund, monies, taxes or appropriation out of which the judgments of oratrix can or should be paid, or against which they can be made executory.

And as to all such other matters as have not been specially denied or pleaded to by respondent herein, respondent denies any knowledge thereof and demands strict and full proof thereof.

Wherefore, the premises considered, this respondent prays that its defenses and pleas herein be maintained, and that the bills of complaint of oratrix herein be dismissed, and defendant humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) JAMES J. McLOUGHLIN,
Ass't City Att'y, Solicitor for Respondent.

(Signed) BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS OF THE PARISH OF ORLEANS,
By E. B. KRUTTSCHNITT, *President.*

Oath to the foregoing answer is hereby waived.
New Orleans, March 15th, 1897.

(Signed) CHAS. LOUQUE,
Solicitor for Complainant.

20 *Entry in Chancery Order Book of Filing of Answer.*

Extract from Chancery Order Book.

TUESDAY, *March 16th*, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

The Board of Directors of the Public Schools of New Orleans through Jas. J. McLoughlin, ass't city att'y, solicitor, has this day filed its answer to the original and supplemental bills of complaint herein.

Replication of Complainant.

Filed March 20th, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

The replication of Mrs. M. M. Fisher duly authorized by her husband, M. M. Fisher, saving and reserving to herself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto saith, that she will aver and prove her said bill to be true, certain and sufficient in law to be answered unto; and that said answers both of The City of New Orleans and of The School Board defendants herein, *is* uncertain, untrue and insufficient to replied unto by this repliant; without this that any other matter or thing whatever in said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and she humbly prays, as in and by said bill she hath already prayed.

(Signed) LOUQUE & POMES, *Solicitors.*

Entry in Chancery Book of Filing of Replication.

Extract from Chancery Book.

21 TUESDAY, *March 20th*, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

The complainant herein, through Louque and Pomes, solicitors, has this day filed her replication to the answers of the City of New Orleans and Board of Directors of Public Schools.

Order of Reference to Master.

Entered and filed March 22nd, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

The rule herein taken by complainant for a reference to a master, came up this day for trial—present, Chas. Louque for complainant, J. J. McLoughlin for defendant—when upon consideration thereof, the court ordered said rule to be made absolute, and accordingly that this cause be referred to E. D. Saunders, Esq., as master, to take a full, true, fair and perfect account of all the funds, principal and

interest received by the city of New Orleans from the school taxes levied in 1871, 1873, 1874, 1875, 1876, 1877 and 1878, of all interest remitted illegally, of all properties purchased for said taxes as more fully prayed in the bill and supplemental bill filed herein and to that effect the parties shall produce before said master all books, papers, documents to be examined and which may be necessary or proper in the premises.

New Orleans, La., March 22, 1897.

(Signed) CHARLES PARLANGE, *Judge.*

Petition of F. J. Gasquet.

Filed April 2nd, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

To the honorable circuit court of the United States for the eastern district of Louisiana:

22 The petition of Francis James Gasquet *pro interesse suo;* residing in the city of New Orleans temporarily, and a citizen of the State of New York, respectfully represents:

That your petitioner has obtained a judgment in the State court against the board of directors of the city schools, in the sum of forty-four thousand nine hundred and seventy-eight $\frac{74}{100}$ dollars, with legal interest from Feb'y 25th, 1892, and costs payable out of the school taxes levied by the city of New Orleans prior to 1879, as the whole more fully appears by the duly certified copy of the judgment and record hereto annexed and made part hereof;

That Mrs. M. M. Fisher, a judgment creditor of the school board, has brought her bill for an account of the school taxes against the city of New Orleans for herself and all other persons similarly situated and who are willing to contribute the *pro rata* of costs;

That your petitioner now joins Mrs. Fisher and is willing to contribute his *pro rata* of costs.

Wherefore petitioner prays that he be permitted to file this his petition *pro interesse suo,* and that his claim be referred to the master for adjustment and liquidation and that after a full accounting, that his claim and judgment be paid in full out of the funds accounted and petitioner prays for general relief.

(Signed) LOUQUE & POMES, *Solicitors.*

Order.

Let, as within prayed for, the petition *pro interesse suo* of F. J. Gasquet be filed and let the same be referred to E. D. Saunders, Esq., the master herein, to report to the court.

New Orleans, April 2nd, 1897.

(Signed) CHARLES PARLANGE, *Judge.*

Petition of Jose Venta.

Filed April 2nd, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

To the honorable the circuit court of the United States for the eastern district of Louisiana:

The petition of Jose Venta *pro inter esse suo*, a citizen of the Kingdom of Spain, respectfully represents:

23 That your petitioner has obtained a judgment in the State court against the board of directors of the city schools, in the sum of seventeen thousand and six dollars and twenty-seven cents, with legal interest from May 26th, 1892, and costs, payable out of the school taxes levied by the city of New Orleans prior to 1879 as the whole more fully appears by the duly certified copy of the record and judgment hereto annexed and made part hereof:

That Mrs. Fisher, a judgment creditor of the school board, has brought her bill for an account of the school taxes against the city of New Orleans for herself and other persons similarly situated and who are willing to contribute *pro rata* of costs:

That your petitioner now joins Mrs. Fisher and is willing to contribute his *pro rata* of costs:

Wherefore petitioner prays that he be permitted to file this his petition *pro interesse suo*, and that his claim be referred to the master for adjustment and liquidation and that after a full accounting, that his claim and judgment be paid in full out of the funds accounted and petitioner prays for general relief.

(Signed) LOUQUE & POMES, *Solicitors.*

Order.

Let, as within prays for, the petition *pro interesse suo*, of Jose Venta be filed and let the same be referred to E. D. Saunders, Esq., the master herein, to report to the court.

New Orleans, April 2nd, 1897.

(Signed) CHARLES PARLANGE, *Judge.*

Petition of Mary Quinlan.

Filed May 4th, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

To the honorable circuit court of the United States for the eastern district of Louisiana:

The petition of Mary Quinlan *pro interesse suo*, residing in the State of New York and a citizen thereof, respectfully represents:

That your petitioner has filed a suit in the civil district court for the parish of Orleans under No. 53102 against the board of directors of the city schools for the sum of five thousand three hundred
24 and seventy-three dollars and seventy-eight cents, with legal interest from April 28th, 1897, and costs payable out of the school taxes levied by the city of New Orleans prior to 1879 as the whole more fully appears by the record of said suit;

That Mrs. M. M. Fisher, a judgment creditor of the school board, has brought her bill for an account of the school taxes against the city of New Orleans for herself and all other persons similarly situated and who are willing to contribute their *pro rata* of costs;

That your petitioner now joins Mrs. Fisher and is willing to contribute her *pro rata* of costs;

Wherefore petitioner prays that she be permitted to file this her petition *pro interesse suo*, and that her claim be referred to — master for adjustment and liquidation, and that after full accounting that her said claim be paid in full out of the funds accounted, and petitioner prays for general relief.

(Signed) LOUQUE & POMES, *Solicitors.*

Order.

Let, as within prayed for, the petition *pro interesse suo* of Mary Quinlan be filed and let the same be referred to E. D. Saunders, the master herein, to report to the court.

New Orleans, May 4th, 1897.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Petition of Jean Pomes.

Filed May 4th, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

To the honorable the circuit court of the United States for the eastern district of Louisiana:

The petition of Jean Pomes *pro interesse suo*, residing in the city of New Orleans and a citizen of Louisiana, respectfully represents:

That your petitioner filed suit for the purpose of recovering judgment against the board of directors of the city schools, for the sum of two thousand two hundred and forty-two dollars and forty-five cents, with legal interest from April 12th, 1897, and costs, payable out of the school taxes levied by the city of New Orleans, prior to 1879, as the whole more fully appears by the record hereto annexed and made (part) hereof.

25 That Mrs. M. M. Fisher, a judgment creditor of the school board, has brought her bill for an account of the school taxes against the city of New Orleans for herself, and all other persons

similarly situated and who are willing to contribute the *pro rata* of costs.

That your petitioner now joins Mrs. Fisher and is willing to contribute his *pro rata* of costs.

Wherefore petitioner prays that he be permitted to file this his petition *pro interesse suo*, and that his claim be referred to the master for adjustment and liquidation and that after full accounting that his said claim be paid in full out of the funds accounted and petitioner prays for general relief.

(Signed) LOUQUE & POMES, *Solicitors.*

Order.

Let, as within prayed for, the petition *pro interesse suo* of Jean Pomes be filed and let the same be referred to E. D. Saunders, the master herein to report to the court.

New Orleans, May 4th, 1897.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Report of Master.

Filed May 22nd, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

Report of E. D. Saunders, master in the above case, under order of reference herein of date March 22nd, 1897.

The order of reference herein of date March 22nd, 1897, directs the master to take a full, true, fair and perfect account,

1st. Of all the funds, principal and interest, received by the city of New Orleans, from the school taxes levied in 1871, 1873, 1874, 1875, 1876, 1877 and 1878.

2nd. Of all interest remitted illegally.

3rd. Of all properties purchased for said taxes.

The complainant herein employed Mr. Stewart, an expert accountant, to go through all the books of the city of New Orleans, containing entries of its collections of taxes and interest thereon, and showing the sums paid by the city to the school board. The city employed Mr. Aitkins to make the same examination on its
26 behalf. The examinations of both of these gentlemen were made independently and with the greatest care and thoroughness, and when completed were compared with each other, though the work extended through many books, covering thousands of items, and involved immense labor, they both reached virtually the same results. Though the difference in the results reached by the gentlemen are comparatively trifling, I have adopted the figures of Mr. Aitkins in the few cases in which there was a slight difference.

The results as shown by the reports of Mr. Stewart and Mr. Aitkins are as follows:

1st. The city of New Orleans owes the school board for the principal of school taxes collected and not paid over from the years 1871 to 1878, both inclusive, the amount of $23,180.03.

2nd. The proportion of the interest actually collected by the city of New Orleans on the taxes of the years 1871 to 1878, both inclusive, up to January 1st, 1897, to which the school board will be entitled, if it is entitled to the same proportion of the interest as of the principal of said taxes, is $48,758.75.

It is a question of law whether the school board is entitled to any part of the interest. I think it is—the interest as a mere accessory of the principal belongs in my opinion to the same person to whom the principal belongs. Accordingly in my opinion the amount the city of New Orleans now owes to the school board for taxes collected, and for interest on the taxes collected, is as above stated, $71,938.78.

3rd. Properties bought in.

The complainant abandoned the attempt to show that the city owed anything on account of properties purchased for taxes.

4th. Interest illegally remitted.

The complainant claims that the city should be further charged with interest on the portion of the taxes accruing to the school-tax fund, whether such interest was actually collected by the city or not. In view of the great length of time that has lapsed and the almost impossibility of proving now whether the interest was collected or not, and in view of the fact that under the assessment-rolls there always is an uncollectable amount of interest, I do not think that the city ought to be charged with the interest which she is not shown to have collected. No evidence of any kind was adduced before me on this subject. It was not shown that any part of the uncollectable interest could have been collected or was illegally remitted. I, therefore, find that the city is not chargeable with the calculated amount of interest not collected.

By agreement of the parties, the fees of the experts herein were fixed at two hundred and fifty dollars ($250.00) to each of
27 them of five hundred dollars ($500) to the two. The bill of R. H. Carter, the stenographer, for evidence taken in this case is $21.50.

I further find that the following parties have proved their claims against the fund herein, by judgments rendered in their favor against the school board, in the civil district court for the parish of Orleans, namely:

M. M. Fisher	$11,094.87
"	8,802.39
"	5,864.64
T. J. Gasquet	57,059.69
Jose Venta	21,297.72

And I annex as part of this report the three reports made by Charles A. Aitkins, marked Exhibits "A," "B," and "C."

I, therefore, respectfully submit the foregoing report under the order of reference to me herein.

(Signed) EUGENE D. SAUNDERS,
Special Master.

28 EXHIBIT "A."

Filed May 22nd, 1897.

NEW ORLEANS, *May 3d*, 1897.

Hon. E. D. Saunders, master in chancery.

DEAR SIR: I beg leave to make the following report of the school taxes collected by the city for the years 1873 to 1878, both inclusive, of school taxes paid over to the school board by the city for the years 1873 to 1878, both inclusive, and of school certificates paid by the city for the years 1874 to 1878, both inclusive; also of school taxes collected by the city from March 2nd, 1876, to December 31st, 1896; also of interest collected by the city on delinquent taxes for the years 1871 to 1878, both inclusive, up to January 24th, 1881.

School taxes collected by the city for the years 1873 to 1878, both inclusive		$1,554,202.38
School taxes paid over to school board by the city for the years 1873 to 1878, both inclusive	$1,477,260.95	
School certificates paid by the city for the years 1874 to 1878, both inclusive	69,991.99	
Total cash and certificates	$1,547,252.94	
Balance due school fund	6,949.44	
	$1,554,202.38	$1,554,202.38

The books of the city treasurer and comptroller show that all the school taxes collected by the city for the years 1871 and 1873 were paid over to the school board up to and including March 2nd, 1876.

Up to that date the city taxes and the school taxes were kept in separate accounts, each being credited with its proportion of all taxes collected.

After that date, the two accounts were merged into one. In order to determine the amount of school taxes included in the city taxes accounts of 1871 and 1873, an itemized account was made up from the books of the city treasurer and comptroller of taxes collected by the city for the years 1871 and 1873 from March 2nd, 1876,
29 up to December 31st, 1896, and the total amounts were apportioned as had been prior to the consolidation of the two accounts.

I examined the account made up by Mr. Stewart and found same to be substantially correct.

As now corrected it is as follows:

Taxes collected by the city for the year 1871 from March 2nd, 1876, up to Dec. 31st, 1896	$76,821.31
Taxes collected by the city for the year 1873 from March 2nd, 1876, up to Dec. 31st, 1896	100,913.09

10.181% of collections for 1871	7,821.17
8⅓% of collections for 1873	8,409.42
Total proportion of school taxes	$16,230.59

There is no account on the city's books showing any credit to the school fund of interest collected on delinquent city taxes, but for your information I submit a statement of all the interest collected on all taxes for the years 1871 to 1878, both inclusive, and at the request of Mr. Louque, I have made up a statement showing what would be the proportion of said interest coming to the school fund for these years if it is determined that this interest forms a part of the amount due the school fund.

Mr. McLoughlin objects to this interest being considered at all, as he claims that the school fund has no right whatever to any proportion of the same.

With this reservation, my calculation is submitted to you.

Year.	Interest collected.	Per cent. school tax.	Proportion of interest on school taxes.
1871	91,669.98	10.181	9,332.81
1873	149,476.15	8⅓	12,456.35
1874	108,165.95	10	10,816.59
1875	60,412.67	10	6,041.26
1876	32,906.24	16⅔	5,484.37
1877	10,588.66	13⅓	1,413.81
1878	9,857.74	13⅓	1,314.38
Total proportion of interest on school taxes			$46,859.57

The interest account for 1873 contains about sixty thousand dollars of interest on collections of delinquent taxes for the year 1871.

As the proportion of school tax was 10.181% for 1871, and 8⅓% for the year 1873, 22% should be added to this amount in order that the proper proportion of interest on the school tax might be obtained.

This would increase the amount of the interest account for the year 1873 by thirteen thousand two hundred dollars, one-twelfth of this amount, or eleven hundred dollars (1,100.00) would be the proportion of that interest coming to the school fund.

Summary.

Amount due school fund on collections for the years 1871 to 1878, both inclusive, as on page 1.....	$6,949.44
Amount due school fund on collections of city taxes for the years 1871 and 1873 from March 2nd, 1876, to Dec. 31st, 1896.....	16,230.59
Total	$23,180.03
Proportion of interest on school taxes for the years 1871 to 1878, both inclusive, as per reservation and calculation on page 3.....	46,859.57
Add amount as on page 3.....	1,100.00
Total	$47,959.57
Grand total.....	$71,139.60

On the books of the city treasurer and treasurer of the school board I found that five thousand one hundred eighteen dollars and sixty-seven cents ($5,118.67) had been paid to the school board in excess of the budget for the year 1879, and that two hundred forty-two dollars and nine cents ($242.09) had been returned to the city on account of this overpayment, leaving a balance of four thousand eight hundred seventy-six dollars and fifty-eight cents ($4,876.58) due by the school board to the city for the year 1879.

Mr. McLoughlin requests me to state that the city claims that this amount should be deducted from the amount $23,180.03 above reported as due by her to the school fund which will reduce the same to eighteen thousand three hundred three dollars and forty-five cents ($18,303.45).

Respectfully submitted.

(Signed) CHAS. A. AITKENS,
Expert Accountant.

31 EXHIBIT "B."

Filed May 22, 1897.

NEW ORLEANS, *May 8th*, 1897.

Hon. E. D. Saunders, master in chancery.

DEAR SIR: I beg leave to make the following supplemental report showing the interest collected by the city on delinquent taxes for the years 1871 to 1878, both inclusive, from January 24th, 1881, up to date, and the proportion thereof coming to the school fund, as per reservation in first report; also a statement of the discounts allowed by the city on school taxes for the years 1873, 1875, 1876, 1877 and 1878.

Year.	Interest collections.	Per cent. school tax.	Proportion of interest on school tax.
1871	195.57	10.181	19.91
1873	33.67	8⅓	2.80
1874	2,095.07	10	209.50
1875	1,862.81	10	186.28
1876	1,017.52	16⅔	169.59
1877	1,270.20	13⅓	169.36
1878	313.06	13⅓	41.74
Total proportion of interest on school taxes			799.18

The statement given in my first report of interest collections, &c., included all the interest collected up to January 24th, 1881.

Amount on sheet 4 first report	47,959.57
Add amount as above	799.18
Grand total	48,758.75

Discount on School Taxes for the Years 1873, 1875, 1876, 1877, *and* 1878.

1873	1,958.50
1875	1,098.61
1876	1,936.39
1877	2,666.81
1878	4,272.96
Total	11,933.27

The books of the city treasurer show that, although a discount was allowed on all taxes paid before a certain date, the school
32 taxes were paid over to the school board in full, and the city lost the interest on those taxes, charging it to the interest account for the year for which the discount was allowed.

This the city paid over to the school board during the years 1873, 1875, 1876, 1877 and 1878, eleven thousand nine hundred thirty-three dollars and twenty-seven cents more than the actual amount of school taxes collected for those years.

There does not appear to have been any discount on taxes for the years 1871 and 1874.

On the city treasurer's ledger I found a memorandum statement showing the amount of discount on school taxes for the year 1878 to

have been four thousand four hundred six dollars and sixty-nine cents ($4,406.69) which was not received back.

This is a little larger than amount given above.

The total discount on all taxes for the year 1875 is also given on the ledger.

From this I am of the opinion that the discount on school taxes for the year 1875 must have been a little larger than amount given above.

Respectfully submitted.

(Signed) CHAS. A. AITKENS,
Expert Accountant.

Entry in Chancery Order Book of Filing Report.

Extract from Chancery Order Book.

SATURDAY, *May 22nd*, 1897.

MRS. M. M. FISHER
vs. } No. 12516.
CITY OF NEW ORLEANS ET AL.

The parties in interest are hereby notified that E. D. Saunders, special master herein, has this day filed his report in this cause.

Motion to Make Board of Liquidation Party.

Entered and filed May 27th, 1897.

MRS. M. M. FISHER
vs. } No. 12516.
CITY OF NEW ORLEANS.

33 In Equity.

On motion of James J. McLoughlin, assistant city attorney, solicitor for defendants, and on suggesting to the court that he is of opinion that The Board of Liquidation of the City Debt of New Orleans, a corporation created and organized under the laws of Louisiana, and a citizen of the State of Louisiana and domiciled in the city of New Orleans, is a necessary party to this suit, and should be made a party hereto,

It is ordered that The Board of Liquidation of the City Debt of New Orleans, aforesaid, be made a party hereto, and be notified hereof and cited to appear and answer and defend its interest, if any, herein.

Service accepted without waiving any rights.

(Signed) LOUQUE & POMES, *Solicitors.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., May 28th, 1897, and on the 29th day of May, 1897, I served a true copy of the

within motion on the Board of Liquidation through R. M. Walmsley, president thereof, by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

Circuit Court of the U. S. for the Eastern District of Louisiana.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

Exception- to Master's Report.

Filed May 31st, 1897.

Exceptions taken by Mrs. M. M. Fisher, F. J. Gasquet, and Joseph Venta to the report of E. D. Saunders, master in chancery *pro hac vice*, to whom this cause stood referred by the decree heretofore made herein.

First exception. That the master failed to reserve the rights of these plaintiffs and interveners to the interest money collected by the city of New Orleans for the school fund since January, 1881;

34 Your exceptors aver that in the bill of complaint herein it was averred that the city of New Orleans had remitted a large amount of interest to the tax-payers and an attempt was made to hold the said city liable for said interest which it was averred was illegally remitted;

That on an examination of the accounts your exceptors discovered that the greatest deficit came not from the interest illegally remitted, but from a contract made by the city of New Orleans in 1881 with the civil sheriff by virtue of which all the interest accrued on the taxes was given and allowed to the sheriff as a part consideration of his services;

That the city of New Orleans had no power or right under the constitution to increase the compensation of any officer, and said contract was *ultra vires* as trustee and not binding on the *cestui que trust;*

That your exceptors were delayed already so long by litigation in the enforcement of their claim that they preferred that their right to further accounting should be reserved, than to file a supplemental bill with the permission of this hon. court; that therefore the rights of your exceptors to a further accounting on that head should have been reserved by the master and should be so now reserved by this hon. court.

Second exception. Your exceptors aver that they found it extremely difficult and a work of great magnitude to arrive at the properties purchased by the city for the taxes and for the time

being your exceptors were not able to get at the correct description of said properties;

That the officers of New Orleans are busy with the regular duties, and your exceptors did not deem it expedient at the present junction to enforce their rights to an account of said properties, and their rights should be reserved.

Third exception. That the master failed to allow any interest on the moneys received by the city of New Orleans from the time the same was payable;

That your exceptors are entitled to interest with an annual rest according to the rules and principles of equity and jurisprudence; but they will content themselves with simple interest reserving their rights to a further account when found necessary;

Therefore the said exceptors do except to the said report and appeal therefrom to the judgment of this hon. court, and in other respects your exceptors pray that the report of the master be approved and that a decree be rendered accordingly and they further pray for general relief.

(Signed) LOUQUE & POMES, *Solicitors.*

35 *Motion to Fix Exceptions and Final Hearing.*

Entered and filed May 31st, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

On motion of Louque & Pomes, solicitors for complainant and interveners, and on suggestion to the court that they have filed exceptions to the master's report herein and on further suggestion that this cause now stands ready for final hearing:

It is ordered by the court that J. J. McLoughlin, Esq., solicitor for defendant, be now notified that the exceptions to the master's report and final hearing are fixed for trial on Saturday, the 5th of June, 1897, at 11 o'clock a. m.

Petition of Mrs. A. B. Gage.

Filed June 5, 1897.

United States Circuit Court, Eastern District of Louisiana.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

The petition of intervention of Mrs. Mary A. B. Gage (born Mary A. B. Gower), and widow of Moses W. Gage, deceased, residing in the State of Maine, and a citizen of said State, respectfully shows:

That your petitioner has obtained a judgment in the civil district court for the parish of Orleans against the Board of Directors of the

City Schools of New Orleans in the sum of five hundred and fifteen $\frac{44}{100}$ dollars (515.44), with legal interest thereon from November 30, 1887, until paid, and all costs, payable out of the school tax levied prior to the year 1879—as the whole more fully appears by a duly certified copy of said judgment hereto annexed and made part hereof.

That Mrs. M. M. Fisher, a judgment creditor of the school board, has brought her bill for an account of the school tax against the City of New Orleans for herself and all others similarly situated and interested, who are willing to contribute to the *pro rata* of
36 costs herein. That your petitioner desires to join the said Mrs. M. M. Fisher, complainant, and is willing to contribute her *pro rata* of costs and expenses incurred.

Wherefore, petitioner prays that she be permitted to file this her petition of intervention, *pro interesse suo*, and that her claim be referred to the master for adjustment and liquidation, and after a full account that her claim and judgment be paid out of the school tax levied prior to the year 1879.

And she prays for general and equitable relief, and as in duty bound she will ever continue to pray.

(Signed) E. HOWARD McCALEB, *Solicitor*.

Order.

Let the foregoing petition of intervention be filed and referred to E. D. Saunders, Esq., master herein, for examination and report.

(Signed) CHARLES PARLANGE, *Judge*.

Exceptions of City of New Orleans to Report of Master.

Filed June 7th, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

Defendant excepts to that part of the report of the master wherein he expresses his opinion that the interest on taxes is a mere accessory of the principal, and belongs to the person to whom the principal belongs, and that, therefore, in his opinion, the City of New Orleans owes the school board for taxes collected and interest collected. Exceptor excepts to this on the ground that:

1st. It was no part of the master's duty, under his reference, to decide this question or to express any opinion upon the question of law involved therein, but in the event that the court overrules this exception and holds that such was his duty, then and in that case the City of New Orleans excepts to his conclusions of law, and asserts that, on the contrary, his conclusion is erroneous; that the interest does not follow the taxes, and does not belong to the party to whom the taxes belong.

Defendant excepts to the statement of the master that the amount

reported as collected out of the school taxes from 1871 to 1878, inclusive, is due by the city to the school board or to the board
37 of liquidation at any time since its collection.

Wherefore defendant prays that these exceptions be maintained, and that the master's report be amended accordingly.

And for general relief.

(Signed) JAMES J. McLOUGHLIN,
Ass't City Att'y, Solicitor for City of New Orleans.

Demurrer of the Board of Liquidation of the City Debt.

Filed June 19th, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

Demurrer of the Board of Liquidation of the City Debt, ordered to be made a party herein.

The Board of Liquidation of the City Debt, not confessing or acknowledging any right of defendant to make it a party hereto, nor confessing or acknowledging any of the matters or things at issue herein between the plaintiff and the defendant, whether set up in the bill, demurrer, pleas or answers, says:

That it cannot be made a party to this suit in manner and form as attempted by defendant; that it has no interest in this litigation; that if such were not the fact, appearer could not be made a party to this suit save by service of the bill of complaint and answers to the pleadings herein, or by citation or subpœna in chancery.

That knowledge of the issues between complainant and defendant has not been brought to it in any manner known to the law; that in the order herein made May 22nd, 1897, making it a party hereto, there is no prayer for a decree against appearer, or any prayer for citation or subpœna in chancery, nor does it appear for what purpose appearer is to be made a party to this suit.

That the so-called pleading, consisting solely of the said order of May 22nd, 1897, is insufficient in law or equity to make appearer a party to this suit, and that it desires to be hence dismissed.

Wherefore, and for other errors and defects in the proceedings by which appearer is sought to be made a party, and to be brought into this suit, appearing in the face of the record, this appearer does demur to the whole of the same, and humbly prays for
38 a judgment of this honorable court, whether it be compellable or ought to make any plea or answer herein otherwise than is hereby done; and appearer humbly prays to be hence dismissed, with costs and charges in this behalf most wrongfully sustained.

(Signed) BRANCH K. MILLER,
Solicitors of the Board of Liquidation of City Debt.

I hereby certify that it is my opinion that the above demurrer is well founded in law.

(Signed) BRANCH K. MILLER,
Solicitor for the Board of Liquidation of City Debt.

Personally came and appeared, Robert M. Walms-ey, president of the Board of Liquidation of the City Debt, who being duly sworn, deposes and says, that he is president of the said board, and that the said demurrer is not *imposed* for delay.

(Signed) R. M. WALMSLEY, *Pres't.*

Sworn and subscribed before me on this the 19th of June, 1897.

(Signed) J. C. HENRIQUES,
Notary Public.

Order Continuing Cause for the Term.

Extract from Minutes.

April Term, 1897.

NEW ORLEANS, SATURDAY, *June 19th*, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, judge.

On motion of counsel for defendant and of counsel for Mrs. Gage, intervener, it is ordered that this cause be continued for the term.

Exceptions of Mrs. A. B. Gage to Master's Report.

Filed June 21st, 1897.

Fifth Circuit. In Equity.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

39 *Exceptions of Mrs. Mary A. B. Gage to the Report of E. D. Saunders, Master, on File Herein.*

1. This exceptor having filed an intervention in this cause, excepts to that portion of the report allowing to Mrs. M. M. Fisher, T. J. Gasquet and Jose Venta the entire fund collected by the City of New Orleans, and for which she is chargeable. That this exceptor has the right, also, to participate in the distribution of said fund *pro rata* with the parties above named.

2nd. That the complainant and T. J. Gasquet and Jose Venta, have no right to appropriate the whole of said fund to the discharge of their judgments, and that it is the duty of the City of New Orleans to call in all parties holding school certificates for the years 1876, 1877 and 1878 to participate in the distribution of the amount

collected by the City of New Orleans, and owing to the school board for said taxes so collected, and the interest thereon, as stated in said master's report.

Wherefore, intervener and exceptor prays that these exceptions be maintained, and that the master's report be reformed and amended accordingly, and for general relief.

(Signed) E. HOWARD McCALEB,
Att'y for Exceptor, Intervener.

Motion to Fix Exception.

Filed June 28th, 1897.

MRS. M. M. FISHER *vs.* CITY OF NEW ORLEANS. } No. 12516.

On motion of Charles Louque, solicitor for complainant, it is ordered that the exceptions to the master's report and demurrer herein be fixed for trial *for* on Thursday, the 1st day of July, 1897, at 11 o'clock, a. m., and that the City of New Orleans, E. Howard McCaleb, solicitor for Mrs. Gage, and Branch K. Miller, solicitor for the Board of Liquidation, be notified hereof.

Exception to Jurisdiction of the Court.

Filed June 29th, 1897.

(Stricken from the files Dec. 20, 1897.)

40 MRS. M. M. FISHER *vs.* CITY OF NEW ORLEANS. } No. 12516.

Now into court comes the City of New Orleans and excepts to the jurisdiction of the court *ratione materiæ et personæ:*

Defendant shows that Mrs. M. M. Fisher is a citizen of New Orleans and of the State of Louisiana.

That plaintiff's petition contains no averment that the suit could have been maintained by the assignors of the claim sued upon by Mrs. M. M. Fisher in the suit which forms the basis of this action.

Wherefore, exceptor prays that this exception be maintained, and that plaintiff's suit be dismissed at her cost; for all necessary orders in the premises, and for general relief.

(Signed) J. J. McLOUGHLIN AND
W. B. SOMERVILLE,
Ass't City Attorneys and Solicitors for Defendant.

Plea in Abatement.

Filed July 1st, 1897.

(Stricken from the files Dec. 20, 1897.)

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12516.

The plea of the above-named defendants, The City of New Orleans, through A. Brittin, acting mayor, to the original bill and the supplemental bill of the above-named plaintiff, Mrs. M. M. Fisher.

This defendant, The City of New Orleans, by protestation, not confessing all or any of the matters and things in the said complainant's bills contained to be true in such manner and form as the same are therein set forth, does plead to the jurisdiction of the court in this cause on the ground that complainant, Mrs. M. M. Fisher, is a citizen of the State of Louisiana, and is residing in the city of New Orleans, at No. 2335 Chippewa street; that plaintiff, Mrs. M. M. Fisher, and defendant, are both citizens of the State of Louisiana, and that by reason thereof this court is without
41 jurisdiction *ratione personæ*. That the civil district court for the parish of Orleans is the only court competent to adjudicate upon the contest between plaintiff and defendant. That the matters above offered are relied upon as an objection or bar to this suit.

Wherefore, defendant prays *that* judgment of the court whether it ought to be compelled further to answer the bill of plaintiff filed herein, and that this suit be abated and dismissed at plaintiff's costs.

(Signed) W. B. SOMERVILLE,
Solicitor for Defendant.

Abraham Brittin, acting mayor of The City of New Orleans, defendant in above-entitled cause, being duly sworn, says that the foregoing plea is not interposed for delay; that Mrs. M. M. Fisher was before her marriage a resident of this city, in her father's house, and that she is now residing in this city, at No. 2335 Chippewa street; and affiant is informed and believes that Mrs. M. M. Fisher is a native of the city of New Orleans, State of Louisiana.

(Signed) ABRAHAM BRITTIN,
Acting Mayor.

Sworn to and subscribed before me this 1st day of July, 1897.

(Signed) P. ALPH. RABOUIN,
Notary Public.

Order Fixing Exceptions.

Extract from Minutes.

November Term, 1897.

NEW ORLEANS, MONDAY, *November 29th*, 1897.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, judge.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

In this cause it is ordered that the exceptions to the master's report be fixed for December 4th, 1897, at 11 a. m., on the motion of C. Louque, attorney for plaintiff.

42 *Intervention of U. Koen.*

Filed Dec. 4th, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

The petition of intervention of Urban Koen, of New Orleans, State of Louisiana, who is a citizen of the said State of Louisiana, respectfully shows:

That your petitioner has obtained a judgment in the civil district court for the parish of Orleans against The Board of Directors of the City Schools of New Orleans, No. 53833 of the docket of said court, division "D," in the sum of twenty-two thousand nine hundred and ninety-one $\frac{7}{100}$ dollars and all costs, payable out of the school tax levied prior to 1879—as the whole more fully appears by a duly certified copy of said judgment hereto annexed and made part hereof.

That Mrs. M. M. Fisher, a judgment creditor of the school board, has brought her bill for an account of the school tax against the City of New Orleans for herself and all others similarly situated and interested, who are willing to contribute to the *pro rata* of costs herein. That your petitioner desires to join the said Mrs. M. M. Fisher, complainant, and is willing to contribute his *pro rata* of the costs and expenses incurred.

Wherefore, petitioner prays that he be permitted to file this his petition of intervention, *pro interesse suo*, and that his claim be referred to the master for adjustment and liquidation, and after a full account that his claim and judgment be paid out of the school tax levied prior to the year 1879 and for costs and general relief.

(Signed) E. HOWARD McCALEB,
Solicitor for Intervener.

Civil District Court for the Parish of Orleans, City of New Orleans, State of Louisiana.

URBAN KOEN
vs.
BOARD OF SCHOOL DIRECTORS OF THE Public School- of the City of New Orleans. } No. 53833, Division " D."

43 *Judgment.*

This cause came on this 24th day of November, 1897, for trial.

Present: E. Howard McCaleb, Esq., attorney for plaintiff; J. J. McLoughlin, assistant city attorney, for defendant.

When after hearing pleadings, evidence and counsel, and for the reasons orally assigned, the court considering the law and the evidence to be in favor of the plaintiff and against the defendant—

It is ordered, adjudged and decreed that the plaintiff, Urban Koen, do have and recover judgment against The Board of Directors of the Public Schools of the City of New Orleans for the sum of twenty-two thousand nine hundred and ninety-one 7/100 dollars ($22,991.07) *dollars*, payable out of the school tax levied prior to the year 1879 by the city of New Orleans.

And costs of court.

Judgment rendered November 24, 1897.

Judgment signed December 1st, 1897.

(Signed) N. H. RIGHTOR.

A true copy.

(Signed) LOUIS BURTHE, *D'y Clerk.*

The reference to a master is waived and it is admitted that the intervener is entitled to participate in the fund, if any be distributed.

New Orleans, Dec. 3, '97.

(Signed) CHAS. LOUQUE,
Solicitor for Complainant and Intervener.

Reference waived, correctness of judgment admitted, and intervener permitted to become party to suit. All other defenses reserved.

(Signed) JAMES J. McLOUGHLIN,
Ass't City Att'y, for City of New Orleans.

Order.

Let this intervention be filed *nunc pro tunc* as of December 4th, 1897.

December 20th, 1897.

(Signed) CHAS. PARLANGE, *Judge.*

44 *Order: Case Continued to Dec. 11th, 1897.*

Extract from Minutes.

NEW ORLEANS, SATURDAY, *December 4th*, 1897.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge.

On motion of counsel for the parties herein, it is ordered that this cause be continued to Saturday, December 11th, 1897, at 11 a. m. to be heard on the exceptions to the master's report.

Report on Intervention of Mrs. A. B. Gage.

Filed Dec. 10th, 1897.

MRS. M. M. FISHER *vs.* CITY OF NEW ORLEANS. } No. 12516.

Report of the master on the intervention of Mrs. A. B. Gage, widow of Moses W. Gage.

It is shown by a certified copy of the civil district court, rendered in the suit of Mrs. Mary A. B. Gage, *vs.* The Board of Directors of the Public Schools, *et al.*, on December 1st, 1893, that the intervener herein has recovered judgment against The Board of Directors of the City Schools of New Orleans, for the sum of five hundred and fifteen dollars and forty-four cents ($515.44), with legal interest thereon from November 30th, 1887, until paid, and all costs of suit, the whole payable out of the school tax levied prior to the year 1879 by the General Assembly of the State; the copy of judgment above referred to is offered on behalf of the intervener herein, as an exhibit to her petition of intervention, and it is also offered as a part of this report.

As there is no dispute about the facts, I accordingly find and report that Mrs. Mary A. E. Gage has recovered a judgment against The Board of Directors of the City Schools of New Orleans, for the sum of five hundred and fifteen dollars and forty-four cents, with legal interest thereon from November 30th, 1887, until paid and all costs of suit, the whole payable out of the school tax levied prior to the year 1879 by the General Assembly of this State.

Accordingly I further find that said intervener is entitled
45 to *pro rata* on her said judgment in such funds as may be recovered in these proceedings for the school tax levied prior to the year 1879 by the General Assembly of the State of Louisiana.

Dec. 9, 1897.

(Signed) E. D. SAUNDERS.
Special Master.

Order Sustaining Demurrer of Board of Liquidation.

Extract from Minutes.

NEW ORLEANS, SATURDAY, *December 11th*, 1897.

Present: Hon. Don A. Pardee, circuit judge.
Present: Hon. Charles Parlange, district judge.
Court met pursuant to adjournment.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

The demurrer herein filed by the Board of Liquidation June 19th, 1897, to the order obtained by the defendant making said board a party to this suit, came on this day for hearing.

Present: Branch K. Miller for demurrer.

Present: J. J. McLoughlin for City of New Orleans, and was argued, whereupon it was ordered that the demurrer be sustained and the Board of Liquidation be dismissed from this suit.

Motion of City and Order of Continuance.

Extract from Minutes.

NEW ORLEANS, SATURDAY, *December 11th*, 1897.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.
Present: Hon. Charles Parlange, district judge.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

On motion of J. J. McLoughlin assistant city attorney of
46 counsel for defendant suggesting that he desires a continuance herein, it is ordered that the hearing of the exceptions to the master's report be continued to Friday, December 17th, 1897, counsel for all parties being present and taking notice.

Petition of Pomes et als., Interveners.

Filed Dec. 13th, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

To the hon. the circuit court of the United States for the eastern district of Louisiana:

The petition *pro interesse suum* of Jean Pomes, Mary Quinlan, Marie Fortier, duly authorized by her husband, Georgiana T. Young,

Lizzie G. Wheelright, Mary A. Sullivan, Francis Johnson, respectively represents:

That your petitioners have each obtained a final judgment before the civil district court for the parish of Orleans for the respective sums of $6,315.73 + 50.00; $5,373.75 + —; 32.19 + 5.00; $305.34; $155.88; 155.88; $36.02 + 10.00 against The Board of Directors of the City Schools for the Parish of Orleans, payable out of the school taxes levied by the city of New Orleans prior to 1879, as the whole more fully appears by the copies of judgments hereto annexed and made part hereof.

That Mrs. M. M. Fisher has filed a bill in this hon. court, claiming an account from the city of New Orleans and that a reference has been ordered and the master has made his report.

That your petitioners are desirous of intervening herein and of joining the complainant and of paying their share of expenses.

That their petition should be referred to a master to report upon the va-idity of their claims and petitioners pray that they be allowed to intervene for their own interest and permitted to join the complainant herein and they pray for general relief, &c.

(Signed) CHAS. LOUQUE.

Reference to the master waived and it is admitted that the judgments claimed are correct.

New Orleans, December 8th, 1897.

(Signed) E. HOWARD McCALEB,
Att'y for Mrs. M. A. B. Gage and U. Koen, Interveners.

(Signed) JAMES J. McLOUGHLIN,
Ass't City Att'y, Reserving All Defenses.

47 *Order.*

Let this petition of intervention be filed *nunc pro tunc* as of Dec. 13th, 1897.

(Signed) CHARLES PARLANGE,
U. S. Judge.

New Orleans, Dec. 20th, 1897.

Rule to Strike Out Certain Papers.

Filed Dec. 13th, 1897.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

On motion of Chas. Louque, solicitor for complainant, and on suggestion to the court that the two papers filed in this cause, and styled "exception to the jurisdiction of the court *ratione materiæ et personæ*," and plea in abatement are irregular and do not comply with the requirements of the equity rules, that said documents were not filed at the time required by said rules and are irregular.

It is ordered by the court that the defendant show cause on Friday, the 17th of Dec., 1897, at 11 o'clock a. m., why they should not be taken off the files.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Dec. 14th, 1897, and on the same day I served copy hereof on the City of New Orleans, La., by handing same to Hon. Walter C. Flower, mayor, in person, at the city hall.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY,
Deputy Marshal.

48 *Petition of Intervention of Edward F. Duclaux.*

Filed Dec. 20, 1897.

United States Circuit Court, Eastern District of Louisiana.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

The petition of intervention of Edward F. Duclaux, of New Orleans, State of Louisiana, a citizen of said State, with respect shows:

That petitioner has obtained a final judgment in the civil district court for the parish of Orleans against The Board of School Directors of the City of New Orleans, No. 43557 of the docket of said court, division "B," in the sum of two thousand and ninety $\frac{17}{100}$ dollars ($2,090.17), and costs, payable out of the school taxes for the years prior to 1879, as will more fully appear from a duly certified copy of said judgment annexed hereto and made part hereof.

That Mrs. M. M. Fisher, a judgment creditor of the said school board, has brought a bill in this hon. court for an account of the school tax, against the city of New Orleans, for herself and for all others similarly situated and interested, who are willing to contribute their share of costs, *pro rata.*

That a reference has been ordered, and the master has made his report.

That your petitioner desires to intervene herein and join the complainant, and is willing to pay his share, *pro rata,* of the expenses and costs.

Wherefore, petitioner prays that he be permitted to file this his petition of intervention *pro interesse suo,* and that his claim be referred to the master for adjustment and liquidation, and, after a full account, that his claim and judgment be paid out of the school taxes levied prior to the year 1879; and for costs, and for general relief.

(Signed) CHAS. J. THEARD,
Solicitor for Intervener.

Reference to the master waived, and it is admitted that the
49 judgment claimed is correct and that intervener is entitled to participate in the fund, if any, to be distributed.

New Orleans, Dec. 17th, 1897.

(Signed) CHAS. LOUQUE,
Solicitor for Compl't and Interveners.

All rights reserved.

(Signed) JAMES J. McLAUGHLIN,
Ass't City Att'y.

(Signed) E. HOWARD McCALEB,
Solicitor for Mrs. Gage and U. Koen, Interveners.

Let this petition of intervention be filed.

(Signed) CHARLES PARLANGE, *Judge.*

N. O., Dec. 20, 1897.

Plea of Defendants to Original and Supplemental Bills of Complaint.

Presented in open court Dec. 20, 1897, and leave to file refused.

United States Circuit Court for the Eastern District of La.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516. In Equity.

The plea of the above-named defendants, The City of New Orleans, through Walter C. Flower, mayor, to the original bill and supplemental bill of the above-named complainant, Mrs. M. M. Fisher.

This defendant, The City of New Orleans, by protestation, not confessing all or any of the matters or things in the said complainant's bills contained, to be true in such manner or form, as therein set forth, does plead to the jurisdiction of the court in this cause on the ground that complainant, Mrs. M. M. Fisher, is a citizen of the State of Louisiana, and is residing in the city of New Orleans, at No. 2335 Chippewa street; that complainant, Mrs. M. M. Fisher was a citizen of the State of Louisiana at the time that she instituted her original suit, No. 12060, in this honorable court; that she has continuously remained a citizen of Louisiana ever since that time, and was such at the time of the institution of the present proceedings, and is now.

That defendant did not discover these facts until after exceptions had been filed by defendant to the master's report herein;
50 that defendant had made due and diligent search to discover these facts, through the Secretary of State of the United States in Washington, and through the consul general of the United States, in Havana, Cuba; that complainant Mrs. M. M. Fisher, and defendant, are both citizens of the State of Louisiana, and that by reason thereof this court is without jurisdiction *ratione personæ*. That the

civil district court for the parish of Orleans is the only court competent to adjudicate upon the contest between complainant and defendant.

That in filing suit No. 12060, and in filing this present suit complainant claimed to be a subject of Spain; she did so for the purpose of acquiring jurisdiction herein, by a fraud upon the court; that by inducing this defendant to demur herein, and to answer herein—this defendant being at the time ignorant of the fact, that complainant was practicing and had practised a fraud upon this honorable court, to obtain jurisdiction herein—defendant was misled by the said fraud and misrepresentation of the complainant; and equity requires that this defendant be permitted to withdraw or treat as withdrawn, the demurrer and answers heretofore herein filed by defendant, and to file now this plea to the jurisdiction of the court.

Wherefore, defendant prays the judgment of the court that it be permitted to withdraw or treat as withdrawn, the demurrer and answers hereinbefore filed by it, and that this plea be filed and this court judge whether defendant ought to be compelled further to answer the bill and supplemental bill of complainant filed herein, and that this suit be abated and dismissed at complainant's costs.

(Signed) JAMES J. McLOUGHLIN,
Ass't City Att'y, Solicitor for Defendant.
(Signed) W. C. FLOWER, *Mayor.*

I, the undersigned solicitor for the defendant, hereby certify that in my opinion the foregoing plea is good in law.

(Signed) JAMES J. McLOUGHLIN,
Ass't City Att'y, Solicitor for Defendant.

Walter C. Flower, mayor of The City of New Orleans, defendant in above-entitled cause, being duly sworn, deposes and says that the foregoing plea is not interposed for delay; that Mrs. M. M. Fisher was, at the time of the institution of suit No. 12060 in this honorable court, a citizen of Louisiana; that she has remained such continuously since; that she was a citizen of Louisiana at the time this present suit No. 12516 was instituted; that she is now residing in this city, at No. 2335 Chippewa street at her father's house; that affiant is informed and believes that Mrs. M. M. Fisher, her husband and her parents are all citizens of the State of
51 Louisiana, and were such at the time of the institution of the present suit.

Affiant further swears that these facts were not known to him, until after the filing of the exceptions to the master's report herein, notwithstanding that affiant has made due and diligent search and investigation for the purpose of discovering the same.

(Signed) W. C. FLOWER, *Mayor.*

Sworn to and subscribed before me this 17th day of December, 1897.

[SEAL.] (Signed) R. L. TULLIS,
Notary Public.

Order Refusing Application to File Plea to the Jurisdiction and Motion to File Same.

Extracts from the Minutes.

November Term, 1897.

NEW ORLEANS, MONDAY, *December* 20, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

This day in open court J. J. McLoughlin, ass't city att'y, of counsel for defendant, presented a plea to the jurisdiction and a motion to file same.

Whereupon counsel for complainant and interveners objected to the filing of the same on the grounds urged by them. After hearing the counsel for both parties the court refused the application to file said plea at this time.

Hearing upon Master's Report and Exceptions Thereto: Exceptions Overruled and Report Confirmed, and Master's Fee Fixed.

Extract from the Minutes.

MONDAY, *December 20th*, 1897.

MRS. M. M. FISHER AT ALS.
vs.
CITY OF NEW ORLEANS. } No. 12516.

52 This case came on to be heard upon the report of E. D. Saunders, special master, filed May 22, 1897, and upon the exceptions filed thereto.

Charles Louque, appearing for the complainant, Mrs. M. M. Fisher, and for Jean Pomes, Mary Quinlan, F. J. Gasquet, J. Venta, Marie Fortier, Georgiana T. Young, Lizzie G. Wheelwright, Mary A. Sullivan and Francis Johnson, interveners.

E. Howard McCaleb appearing for Urban Koen and Mrs. Mary Gage, interveners.

Chas. J. Theard appearing for E. T. Duclaux, intervener.

J. J. McLoughlin, ass't city attorney, for The City of New Orleans, def't and exceptor.

Whereupon counsel for complainant and interveners offered in evidence the report and exhibits thereto annexed, and the cause was argued by the solicitors for the respective parties.

Whereupon and on consideration thereof it is ordered by the court that the exceptions to the master's report be overruled and the said report be confirmed.

It is further ordered that the master's fee be fixed at $250.00

Motion to Take from the Files "Exception to the Jurisdiction of the Court Ratione Materia et Personæ" and Plea in Abatement Granted.

Extract from the Minutes.

MONDAY, *December* 20, 1897.

MRS. M. M. FISHER ET ALS. *vs.* CITY OF NEW ORLEANS. } No. 12516.

The motion filed Dec. 13, 1897, by complainant herein to take from the files the two papers styled "exception to the jurisdiction of the court *ratione materiæ et personæ*" and plea in abatement, came on this day for hearing—present, Chas. Louque, solicitor for mover; J. J. McLoughlin, ass't city att'y, for def't—and was submitted; whereupon it was ordered that said motion be granted and that said documents be taken from the files.

Motion to Fix and Order.

Entered and filed Dec. 20, 1897.

53 Circuit Court of the United States for the Eastern District of La.

MRS. M. M. FISHER *vs.* CITY OF NEW ORLEANS. } No. 12516.

On motion of Chas. Louque, solicitor for complainant, and on suggestion to the court that this cause is now ready to be heard on its merits:

It is ordered by the court that this cause be fixed on final hearing on Tuesday, the 28th, 1897, and let the defendant be notified.

Hearing of Cause, Notes of Evidence, and Submission.

Extract from the Minutes, November Term, 1897.

NEW ORLEANS, SATURDAY, *January* 22, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MRS. M. M. FISHER ET ALS. *vs.* CITY OF NEW ORLEANS. } No. 12516.

This case came on this day for final hearing upon the bill, answer, replication, exhibits, proofs and testimony and master's report; whereupon the counsel for the complainants offered the following evidence on her behalf, viz:

1. The petition, exception, answer and judgments in Mrs. M. M. Fisher *vs.* Board of School Directors, No. 12060, United States circuit court for this district.

2. The master's report and order of the court approving same.

3. The report of C. H. Stewart and Chas. A. Aitkens to the master.

4. The report of Clark Steen of the standing of the schools.

5. The testimony taken before the master, Mrs. Mary Pohlman, Henry Stewart, Malcolm Reach, Clark Steen and Chas. A. Aitkens.

6. The various judgments in favor of interveners and reports of master thereon as well as waiver of reference, as follows:

Mrs. M. M. Fisher, judgment for $11,094.87/100 with legal interest on $8,097.17/100 from May 22/97.

54 To the same, $8,802.39/100 with legal interest on $7,401.69/100 from May 22, 1897.

And the further sum of $5,864.64/100 with legal interest on $5,140.30/100 from May 22, 1897.

F. J. Gasquet, the sum of $57,059.69/100 with legal interest on $44,978.74/100 from May 22/97.

Joseph Venta, the sum of $21,297.77/100 with legal interest on $17,006.27/100 from May 22, 1897.

Mary Quinlan, the sum of $5,373.75 and fifteen dollars costs with 5 % interest from December 2, 1897.

Jean Pomes, the sum of $6,315.73/100 with fifty dollars costs and legal interest from M'ch 20, 1897.

Georgiana T. Young, $653.12/100 with ten dollars costs.

Miss Mary Fortier, the sum of $32.19/100 and five dollars costs.

D. A. Chaffraix, the sum of $4,627.94/100 and seven 59/100 dollars costs.

Wid. Amelie Gautreau, the sum of $100.00/100 dollars with legal interest from Aug. 29, 1897, and five dollars costs.

Mrs. A. B. Gage, the sum of $515.44/100 with 5 % interest from Nov. 30, 1887.

Ed. F. Ducloux, the sum of $2,090.17/100 and $81.00/100 costs.

U. Koehn, the sum of $22,991.07/100 and $27.10/100 costs.

Peter Johnson, the sum of $172.45/100 with legal interest from date of judgment being —— and costs amounting to $——.

H. Abraham & Son, the sum of $1,001.68/100 with legal interest from date of judgment being —— and costs amounting to $——.

And counsel for Mrs. Mary A. B. Gage, intervener, offered the following evidence on her behalf:

1. Master's reports herein.

2. Decree confirming master's reports.

3. Judgment of the civil district court for the parish of Orleans in the suit of Mrs. Mary A. B. Gage *vs.* The Board of Directors of the Public Schools *et al.*

And counsel for U. Koen, intervener, offered the following evidence on his behalf, viz:

1. Master's reports herein.

2. Decree confirming master's reports.

3. Judgment of the civil district court for the parish of Orleans,

division "D," in the suit entitled Urban Koen *vs.* Board of
55 Directors of the Public Schools of the Parish of Orleans, No. 53833 of the docket thereof.

4. Waiver and consent on intervener's petition herein.

And thereupon counsel for the defendant offered the following evidence in her behalf, viz:

1st. Copies of all the budgets of the city of New Orleans, showing estimated revenues and expenditures, for the years 1871 to 1879 inclusive.

2nd. All the record of the suit No. 12060 in this court that has not already been offered by the complainant, and particularly the *fi. fa.*, garnishment, interrogatories, and answers thereto of Charles H. Schenck, city treasurer, and *ex officio* treasurer of the school board.

Whereupon the case was argued by the solicitors for the respective parties and submitted—when the court took time to consider.

Complainant's Offerings.

Petition, exception, answer, and judgments in Mrs. M. M. Fisher *vs.* Board of School Directors, No. 12060, United States circuit court for this district.

Petition. Filed February 23, 1892.

To the hon. the circuit court of the United States for the eastern district of Louisiana:

The petition of Mrs. M. M. Fisher, born Blackadder, duly authorized and assisted by her husband, M. M. Fisher, who appears herein, for said purpose and joins his said wife herein, both citizens of the Kingdom of Spain, and residing in the island of Cuba, respectfully represents:

That your petitioners have recovered judgment against the Board of Directors of the City Schools of New Orleans, a corporation duly created under the laws of the State of Louisiana, and a citizen of said State, for the sum of eight thousand and ninety-seven 17/100 dollars, with legal interest from May 22d, 1890;

That said judgment was rendered in favor of your petitioner and against said defendant, by the civil district court for the parish of Orleans, under No. 30262 of the docket of said court;

That your petitioner's claim which formed the basis of the aforesaid judgment was for the salary due to petitioner for work actually
56 done as a school teacher of the public schools of the city of New Orleans and for the salary of other teachers whose claims were transferred to your petitioner, as the whole more fully appears by the certified copies of the petition, answer and judgments, both of the district court and affirmed by the supreme court of Louisiana, on appeal;

That said judgment is made payable out of the school tax levied

by the city of New Orleans, on the assessed property of said city, for the years 1878 and previous years;

That notwithstanding due demand the defendants refuse to pay. Wherefore, petitioners pray that E. B. Kruttschnitt, president of the board of directors of the city schools of New Orleans, be cited hereto and after due proceedings be condemned to pay your petitioners the sum of eight thousand and ninety-seven 17/100 dollars with 5 % interest per annum, from May 22nd, 1890, payable out of the school tax levied by the city of New Orleans prior to 1879; and petitioners pray for general relief, &c.

(Signed) CHAS. LOUQUE, *Attorney.*

(Indorsed:) No. 12060. Circuit court of the U. S. for the eastern district of La. Mrs. M. M. Fisher and Husband *vs.* The Board of Directors of the City Schools of New Orleans. Pet'n and record. Chs. Louque, att'y.

Exception.

Filed March 5, 1892.

United States Circuit Court, Eastern District of Louisiana.

MRS. M. M. FISHER, Authorized and Assisted by Her Husband, M. M. Fisher,
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW Orleans. } No. 12060.

Now comes into court the defendant in the above entitled and numbered case, and, for exception to the plaintiff's petition, pleads:

First. That the said plaintiff is without capacity to stand in judgment in this case, for this, that whatever interest the said plaintiff may have had therein, has been seized, and is now in the possession of and the property of the defendants in the case of Mrs. M. M. Fisher, duly authorized by her husband, *versus* The Board of School Directors, No. 30262 of the civil district court of the parish
57 of Orleans, and defendant hereby makes profert of the writ of *fieri facias* in said suit, No. 30262, and the return thereon of the sheriff, and pleads the same, and makes the same part of this exception.

Second. That the court is without jurisdiction to hear and determine this case, for this, to wit: that the rights and credits, the school warrants herein proceeded on, are held by the plaintiffs herein, under assignments, and that the assignors are all citizens of the State of Louisiana and residents of the city of New Orleans, and, therefore, without right to sue defendant in this court, defendant being likewise a citizen of the State of Louisiana and likewise a resident of the city of New Orleans, and that it is not competent for Mrs. M. M. Fisher, the plaintiff herein, in her said character of assignee, to sue defendant.

That Miss M. A. McClane is the owner of school certificates,

transferred and assigned by her to defendant, by means of fourteen different transfers, and that Miss M. A. McClane is a citizen of the State of Louisiana and a resident of the city of New Orleans.

That Miss I. Simmons is the owner of school certificates transferred and assigned by her to plaintiff, by means of eleven different transfers, and that Miss I. Simmons is a citizen of the State of Louisiana and a resident of the city of New Orleans.

That Miss A. A. Finch is the owner of school certificates transferred and assigned by her to plaintiff, by means of three different transfers, and that Miss A. A. Finch is a citizen of the State of Louisiana, and a resident of the city of New Orleans.

That Miss Petard is the owner of school certificates, transferred and assigned by her to plaintiff, by means of three different transfers, and that Miss Petard is a citizen of the State of Louisiana, and a resident of the city of New Orleans.

That Miss M. A. Swatson is the owner of school certificates, transferred and assigned by her to plaintiff by means of ten different transfers, and that Miss M. A. Swatson is a citizen of the State of Louisiana, and a resident of the city of New Orleans.

That Misses I. E. O'Brien, Sheehan, Miller, M. A. Hart, Sintes and Ducatel are owners of school certificates, transferred and assigned by them to plaintiff, by means of different transfers, and that they are all citizens of the State of Louisiana, and residents of the city of New Orleans.

That Miss S. B. Horton is the owner of school certificates, transferred and assigned by her to plaintiff, by means of seven different transfers, and that Miss S. B. Horton is a citizen of the State of Louisiana, and a resident of the city of New Orleans.

That Miss C. A. Warber is the owner of school certificates, transferred and assigned by her to plaintiff by means of three different transfers, and that Miss C. A. Warner is a citizen of the State of Louisiana, and a resident of the city of New Orleans.

58 That Miss M. M. Lowe is the owner of school certificates, transferred and assigned by her to plaintiff by means of fifteen different transfers, and that Miss M. M. Lowe is a citizen of the State of Louisiana and a resident of the city of New Orleans.

That said claims so transferred form the basis of the judgment herein sued on, and that it is so admitted by plaintiff's petition, and that it also appears by said petition that defendant is a citizen of the State of Louisiana.

Wherefore exceptor prays that said exceptions be maintained, and plaintiff's suit herein dismissed with costs.

(Signed) CARLETON HUNT, *Attorney.*

Judgment on Exception to Jurisdiction.

Extract from Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, November Term, 1891.

NEW ORLEANS, SATURDAY, *March* 26, 1892.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

MRS. M. M. FISHER and HUSBAND
vs.
THE BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS of the City of New Orleans. } No. 12060.

By reason of the verdict of the jury herein and in accordance therewith, it is ordered, adjudged and decreed that the exception to the jurisdiction of the court herein filed by defendants be overruled.

Judgment rendered March 26, 1892.
Judgment signed March 31, 1892.
(Signed) EDWARD C. BILLINGS, *Judge.*

Order Overruling Exception as to Seizure of Plaintiff's Interest, etc.

Extract from the Minutes, November Term, 1891.

59 NEW ORLEANS, SATURDAY, *April* 16, 1892.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

MRS. M. M. FISHER ET AL.
vs.
BOARD OF DIRECTORS OF PUBLIC SCHOOLS OF NEW Orleans. } No. 12060.

This cause came on to be heard upon the exception herein filed by the defendant to the effect that plaintiff's interest has been seized by defendants in the suit No. 30262 of the civil district court, parish of Orleans, entitled Mrs. M. M. Fisher *versus* The Board of School Directors and that plaintiff is without capacity to stand in judgment—present, Charles Louque, attorney for plaintiffs; present, Carleton Hunt, for defendants—whereupon, plaintiffs offering in evidence the receipt of the sheriff of the parish of Orleans for the amount of costs due in said suit No. 30262 of the civil district court, thereby releasing said seizure, it was ordered that the exception be overruled.

Answer.

Filed May 10, 1892.

U. S. Circuit Court, East. Dist. of La.

MRS. M. M. FISHER, Authorized, etc., *vs.* BOARD OF SCHOOL DIRECTORS. } No. —.

Into this honorable court comes the Board of Directors of the City Schools of New Orleans, and for answer to the demand against them made in part to your honor, and without in any way waiving the exceptions herein already passed upon, denies each and every allegation in the said petition contained, and prays for strict proof thereof, and that the same be dismissed at plaintiff's cost, and for all general relief.

(Signed) E. A. O'SULLIVAN,
City Attorney.

60 *Judgment.*

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, April Term, 1892.

NEW ORLEANS, THURSDAY, *May* 19, 1892.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

MRS. M. M. FISHER and HUSBAND *vs.* THE BOARD OF DIRECTORS OF THE CITY SCHOOLS OF New Orleans. } No. 12060.

By reason of the verdict of the jury herein and in accordance therewith, it is ordered, adjudged and decreed that the plaintiff, Mrs. M. M. Fisher, and her husband, M. M. Fisher, have judgment in her favor and against the Board of Directors of the City Schools of New Orleans, for the sum of eight thousand and ninety-seven $\frac{17}{100}$ dollars with 5% interest per annum from May 22, 1890, and costs, payable out of the school tax levied by the city of New Orleans prior to 1879.

Judgment rendered May 19, 1892.

Judgment signed May 24, 1892.

(Signed) EDWARD C. BILLINGS, *Judge.*

Master's Report and Order of the Court Approving Same.

Report copied at pages 32 *et seq.*, and order approving report copied at page 65 of this transcript.

Reports of Chas. A. Aitkens to the master, referred to in complainant's note of evidence, copied at page 35 *et seq.* and also at page 38 *et seq.* of this transcript.

Filed January 22, 1898.

Expenditures of Schools, 1873.

Receipts.

Receipts from State treasurer.....	$153,142.34	
Receipts from city of N. O. from March 25, 1873, to March 2, 1876.	309,872.12	
Rec'd from school board, Carrollton	369.86	

Expenditures.

Teachers' salary.....	$3,577,577.69	
Rents	35,536.25	
Porters & portresses.	24,032.00	
School-house repairs and supplies.....	31,077.16	
Sec'y and employees of board.....	4,511.73	
Books, stationery and printing.....	4,698.07	
Law charges and expenses.....	2,926.35	
Transferred to— Carrollton tax.....	369.86	
Schools 1 & 74 by resolution of school board, June 7, '76.	2,655.21	
	463,384.32	463,384.32

Tax Levied by City of N. O., } of 10 00 for School Purposes for 1873.

On an assessment of 135,891,300.	$339,728.25	
Collected March 25, '73, to March 2d, '76.	309,872.12	
Tax yet to — collected.....	29,856.13	
Cancellations	6,058.00	
Balance.	$23,798.13	

Summary.

1874.	Unliquidated.....	$64,980.45	
	State portion as per judgment, 5th D. court, No. 10,762.	8,382.47	56,597.98
1875.	Unliquidated.....	126,387.31	
	State portion as per above.....	32,724.21	93,663.10
1876.	Unliquidated.....	102,493.78	
	State portion.....	41,407.48	61,086.30
1877.	Unliquidated.....	2,300.36	
	See above judgm't.		
1878.	Unliquidated.....	14,890.56	
	Unprovided, except by tax...		211,347.38

JOHN FISHER, TUTOR, ETC., ET AL.

53

62 *Statement of Collection of Taxes,* 1873 *to* 1878, *for School Purposes, and of the Amount of Cash Received, and also School Certificates Received from March* 25, 1873, *to March* 2, 1876.

Year.	Tax collected.	Cash received.	Certificates received.	Total cash & certificates.
1873	$309,872.12	$309,872.12		$309,872.12
1874	302,741.91	284,281.57	$31,141.89	315,423.46
1875	276,106.57	250,7[illegible].95	30,382.88	281,169.83
1876	266,967.26	255,432.52	7,109.43	262,541.95
1877	198,261.13	191,159.46	931.68	192,091.14
1878	200,182.82	185,500.04	426.11	185,926.15
Total tax	$1,554,131.81	$1,477,032.66	$69,991.99	1,547,024.65
Tot'l cash & certificates	1,547,024.65			
Am't on hand Nov. 1, '95	7,107.16			

School Expenditures, 1874.

Rolls.	Rents.	Portresses.	Teachers.	Totals.
January	$2,989.70	$1,996.30	$31,249.41	$36,235.41
February	2,889.70	1,995.00	31,603.30	36,488.00
March	2,819.70	2,025.00	31,848.00	36,692.70
April	2,989.70	2,015.55	31,706.34	36,711.59
May	2,866.05	2,015.00	31,603.45	36,484.50
June	2,844.70	2,040.00	32,322.57	37,207.27
July	2,486.35	2,050.00	32,264.55	36,800.90
August	2,486.35	2,050.00	32,264.55	36,800.90
September	2,594.70	2,010.00	32,067.60	36,672.30
October	2,594.70	2,040.00	32,601.36	37,236.06
November	2,594.70	2,046.25	32,537.55	37,178.50
December	2,584.70	2,041.00	32,536.69	37,162.39
Total	$32,741.05	$24,324.10	$384,605.37	$441,670.52

Carrollton teachers paid		$1,377.48
Salary sec'y, &c., Jan'y, '74, to Feb'y, '75		5,318.90
Books furnished		2,989.59
Stoves, grates, &c., paid at par	$1,519.05	
Bought for $132.00	440.00	
		1,959.05
Contingent expenses paid, face value	5,910.30	
Bought for $73.94	246.75	
		6,157.05
Printing and ads. paid, face value	1,487.08	
Bought for $9.28	32.00	
		1,519.08
Repairing buildings		9,963.80
N. O. Sanitary & Fert. Co., paid for face value Jan'y to Sept.	4,125.72	
Bought Oct. for $132.77	457.83	
		4,583.55
Fuel		1,575.00
Total bro't forward		441,670.52
Total expenditures		$477,114.02

	Estimate of the expenses for public schools for year 1874 as forwarded by board to city council (Nov. 25, '73).	Expenditures by board as per books of treasurer & rolls.
t of school building	$37,000.00	$32,741.05
		1,377.48
ries of teachers	350,000.00	384,605.37
ries of portresses	24,000.00	24,324.10
ries of secretary, &c	4,600.00	5,318.90
ool books	2,500.00	2,989.59
		1,959.05
l, stoves, grates, &c	5,000.00	1,575.00
oms	3,000.00	
ool furniture	10,000.00	
nks, printing, and adds	4,000.00	1,519.08
tingent	6,000.00	6,157.05
airs	10,000.00	9,963.80
itary		4,583.55
	$456,100.00	$477,114.02

Estimate of Receipts by Board.

te of Louisiana	$75,000.00
y of New Orleans	381,100.00
	$456,100.00

Possible Receipts.

m State as per estimate	$75,000.00
m city of New Orleans as per tax levied, being ¼ of 1 % on an assessment of $130,954,456.00	327,386.14
	$402,386.14

ash balance in La. nat'l bank to the credit of schools, 1874, $61.14.
n addition to the sum of $401,700.75, liquidated by cash payments and certifi-
s received for taxes of face value, there has been liquidated a further sum of
201.84 due to the purchase by the treasurer through instructions of board of
tificate, amounting to $10,371.68, for $3,170.84 in cash.

Actual Receipts.

m State		$77,794.33
y of New Orleans, tax 1874:		
Cash	$284,281.57	
Certificate	31,141.89	
		315,423.46
m State, Carrollton tax		369.86
m city of ——, Carrollton tax		1,497.02
nsferred from other years		6,677.22
		$401,761.89

Condition of City Tax.

y tax levied	$327,386.14
y tax collected	302,741.91
	$24,644.23
ncellations, &c	6,840.43
	$17,803.80

The foregoing examination of accounts of schools, 1874, show- that the board of directors presented to the council of the city of New Orleans an estimate of expenditures for year 1874, amounting to $456,100.90, whilst the actual expenditures, or liabilities, of said year *was* $477,114.02, or an excess of $21,014.02. The tax levied by the city of New Orleans, ¼ of 1 %, if total was collected, would amount to but $327,386.14, thus being a deficit from this source, over estimate by board, $381,100.00, of $53,713.86.

School Expenditures for 1875.

Pay-rolls.	Rents.	Portresses.	Teachers.	Totals.
January	$2,564.70	$2,050.00	$32,515.80	$37,130.50
February	2,604.70	2,060.00	32,490.60	37,155.30
March	2,579.70	2,085.00	32,511.10	37,175.80
April	2,579.70	2,170.00	32,513.25	37,262.95
May	2,504.70	2,085.00	32,554.30	37,144.00
June	2,504.70	2,079.90	32,679 85	37,264.45
July	2,489.70	2,080.00	26,070.70	30,640.40
August	2,409.70	2,095.00	26,070.70	30,575.40
September	2,412.20	2,491.80	32,743.15	37,647.15
October	2,424.70	2,453.80	33,283.20	38,161.70
November	2,486.70	2,480.80	33,498.70	38,466.20
December	2,523.35	2,465.80	53,545.50	38,534.65
	$30,084.55	$26,597.10	$380,476.85	$437,158.50

Estimate of Receipts.

State of Louisiana	$48,825.71
City of N. O., ¼ of 1 %, tax on ass't of $119,288,504	298,221.26
	$347,046.97

Actual Receipts.

From State of La.		48,825.71
From city of New Orleans:		
Cash	$250,786.95	
Certificates	30,382.88	
Total	$281,169.83	281,169.83
		$329,995.54

65 *Add.*

Repairs to leased bldgs. p'd face value	$3,110.00	
Purchased for $27.50	54.00	
		3,164.00
Stoves, grates, and fuel	5,596.64	5,596.64
Salaries of secretaries, M'ch, 1875, to Feb'y, '76	4,600.20	4,600.20
Books free		33.76
Cleaning and sanitary ex., face value	3,661.92	
Purchased for $129.47	235.40	
		3,897.32
Contingent		2,738.13
Printing, p'd face value	104.60	
Purchased for $9.42	18.50	
		123.10
School furniture		3,618.05
Total expenditures		$460,929.70

	Estimate of expenditures by board.	Estimate of expenditures as per rolls — books of treasurer.
Rent	$31,636.00	$30,084.55
Teachers	383,860.00	380,476.85
Porters, &c.	24,400.00	26,597.10
Repairs	5,000.00	3,164.00
Stoves, grates, fuel	5,000.00	5,596.64
Secretary	4,600.00	4,600.20
Free books	5,000.00	33.76
Sanitary	8,000.00	3,897.32
Contingent	6,000.00	2,738.13
School furniture	5,000.00	3,618.05
Music teacher	6,500.00	
Printing	1,504.00	123.10
	$486,500.00	$460,929.70
Cash b'ce to credit of schools, 1875		$72.57

In addition to the sum of 32992297 liquidated by cash payments and certificates received for taxes, face value, there has been liquidated a further sum of 354685, due to the purchase of certificates, amounting to $7,198.27, for $3,651.42 cash.

Condition of Tax.

City t'x levied	$298,221.26
Collected	276,106.57
Outstanding	22,114.69
Cancellations	8,235.24
Still due	$13,879.45

66 *School Expenditures, 1876.*

Rolls.	Rents.	Portresses.	Teachers.	Totals.
January	$2,339.70	$2,469.80	$33,349.00	$38,158.50
February	2,363.70	2,450.80	32,796.50	37,611.00
March	2,339.70	2,476.80	32,727.85	37,544.35
April	2,288.70	2,509.80	32,716.00	37,514.50
May	2,338.70	2,499.80	32,869.85	37,708.35
June	2,314.70	2,449.80	32,869.90	37,684.40
July	2,394.70			2,394.70
August	2,344.70			2,344.70
September	2,199.70	2,449.80	32,679.90	37,328.40
October	2,199.70	2,449.80	32,900.80	37,550.30
November	2,199.70	2,451.80	32,874.95	37,526.45
December	2,299.70	2,451.80	33,497.40	38,248.90
Total	$27,623.40	$24,710.00	$329,282.15	$381,615.55

Repairs	$6,996.57
Stoves and fuel	1,397.90
Sec't'y's salary, March to Dec	3,833.50
Sanitary	4,237.47
Contingent	3,286.48
Furniture	3,101.42
Total br't forward	381,615.55
Total expenditures	$404,478.89

	Estimate of expenditures by board.	Expenditures as per rolls & books of treasurer.
Teachers and portresses	$352,570.00	$353,992.15
Rents	25,000.00	27,023.40
Repairs	8,000.00	6,996.57
Stoves and fuel	5,000.00	1,397.90
Secretaries	4,600.00	3,833.50
Sanitary expenses	5,650.00	4,237.47
Contingent	5,000.00	3,286.48
School furniture	3,000.00	3,101.42
	$408,820.00	$404,478.89

67 *Estimate Receipts.*

State of Louisiana, actual	$43,784.27
City of New Orleans, tax ½ of 1% on an assessment of $119,045,515.00.	297,613.78
	$341,398.05

Actual Receipts.

State of Louisiana		$43,784.27
City of New Orleans—		
Cash	$255,432.52	
Certificates	7,109.43	
		262,541.95
		$306,326.22
Tax levied		$297,613.78
Tax collected		266,967.30
		$30,646.52
Cancellations		11,712.04
		$18,934.48

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Rolls.	Treasurer's department.	Secretary's office.	Supt.'s office.	Repairs.	Printing & advertising.	Supplies.	Sanitary.	Attorney's fees.	Fuel.	Rents.	Pensions.	Teachers.	Totals.
January										$2,169.70	$2,456.60	$33,705.90	$38,332.20
February						$16.00				2,369.70	2,456.80	33,722.15	38,564.65
March				$142.10	$2.40	201.50				2,269.70	2,456.80	33,843.20	38,934.30
April		$225.25	$80.40	9.75	9.60	54.45				1,301.80	1,462.08	20,176.76	23,339.09
May	$100.00	219.37	101.50	141.75	50.45	127.58				1,437.80	1,462.05	20,187.45	23,827.95
June	Contingent. 29.00	228.15	100.00	31.50	352.50	80.20				1,369.80	1,462.05	20,193.45	23,855.95
July	462.00	207.25	100.00	145.05	25.00					1,354.80	735.70		2,833.60
August	150.00	100.00	100.00	253.50	9.90	22.00				1,354.80	713.40		2,803.60
September	360.50	180.00	99.98	460.41	140.44	207.35				1,348.80	729.00		3,526.43
October	149.25	180.00	98.30	355.00	117.06	989.25	$25.00		$1,013.00	1,358.80	1,420.80	6,454.25	12,145.71
November	51.50	195.00	99.70	67.55	236.10	150.65	70.00	$500.00	454.00	1,445.80	1,449.80	19,077.75	23,798.85
December	12.83	210.00	101.00		117.50	21.65	70.00	250.00		1,711.30	1,455.80	19,472.00	23,422.68
Total	$1,315.08	$1,856.32	$809.88	$1,605.61	$1,091.60	$1,879.72	$165.00	$750.00	$1,467.00	$19,402.80	$18,261.48	$280,833.51	$255,621.00

69 *Add.*

Secretary's salary, Jan., Feb., M'ch, not on rolls	$1,
Sanitary ac. not on rolls	1,
Contingent ac. not on rolls	1,
Furniture ac. not on rolls	
Repairs ac. not on rolls	1,
Stoves, fuel acc't, not on rolls	2,
Treasurer's office ac. not on rolls	
	$9,
Total br't forward	255,
Total expenditures	$264,

Receipts.

From State treasurer	$70,
From city of New Orleans	191,
	$261,
Certificates rec'd for tax of 1877	
Total receipts	$262,

	Estimate of expenditures by board.	Expendi as per & boo treasu
		$18,
Teachers and portr	$354,500.00	206,
Rents	27,500.00	19,
Repairs	7,000.00	2,
Stoves and fuel	3,000.00	3,
Secretaries	4,600.00	3,
Sanitaries exp.	4,000.00	1,
Contingent	5,000.00	1,
Furniture	3,000.00	
Treasurer's dep't		2,
Sup.t's office		
Printing		1,
Supplies		1,
Attorney's fees		
	$408,600.00	$264,

Estimated Receipts.

State of Louisiana, actual	$70,
City of New Orleans, tax ½ of 1% on an assessment of $109,669,889.00.	*219,
	$289,

70 *Actual Receipts.*

State of Louisiana		$70,
Cash	191,159.46	
Certificate	931.68	
		192,
		262,
City tax levied		*$219,
Collected		198,
		$21,
Cancellations		5,
		$15,
Cash balance November 1st, 1895		

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School Expenditure, 1878.

Rolls.	Attorney's fees.	Contingent.	Supplies.	Printing & advertising.	Fuel.	Sanitary.	Secretary's office.	Sup't's office.	Furniture.	Repairs.	Teams.	Postmaster.	Teachers.	Totals.
January	$83.35	$51.50	$342.74	$235.35	$819.—	$70.00	$235.00	$100.00	$66.70	$2,216.66	$1,386.80	$1,363.00	$10,430.60	$36,430.70
February	83.35	15.00	181.06	27.95	614.55	70.00	250.00	100.00	32.40	1,429.67	1,411.80	1,358.00	10,489.45	25,413.23
March	83.30	11.25	675.39	72.35	30.60	70.00	240.00	100.00	113.50	2,256.63	1,501.80	1,358.00	10,473.00	25,805.12
April		78.85	319.55	137.20		70.00	245.00	100.00	189.35	259.65	1,322.80	1,345.00	19,586.15	23,657.65
May				13.35		70.00	241.40	100.50	508.45	290.10	1,322.80	1,345.00	19,588.40	23,478.60
June		20.00	90.45	177.35		70.00	241.85	100.00	39.30	41.98	1,322.80	1,345.00	19,569.70	23,018.43
July		2.50	37.29	42.00		70.00	240.00	100.00	15.00	949.60	1,322.80	1,345.00	19,561.60	23,335.79
Do.														340.00
August		250.00	160.00	214.80		70.00	240.00	100.00	46.00	6,116.70		679.85	9,780.50	17,287.14
Do.			29.20	41.35		70.00	240.00	100.00	167.50	167.50	1,322.80	679.80	9,784.00	13,225.77
September		250.00	254.82	260.40	635.50		240.00	100.00	1,752.92	626.80	1,323.15	1,315.00	19,219.00	24,880.18
October			218.91			70.00	245.00	100.00			1,300.15	1,335.00	19,219.00	22,350.15
November						70.00	240.00	95.70			1,320.15	1,335.00	20,372.45	23,441.30
			316.66											316.66
														330.
December			185.00			70.00	240.00	70.00			1,305.15	1,363.00	19,802.75	23,115.90
Total	$750.00	$1,205.76	$2,429.32	$1,122.39	$2,119.65	$840.00	$2,898.25	$1,166.20	$2,181.62	$14,394.69	$16,263.00	$16,164.65	$234,870.00	$296,415.53

$1,150.05
1,804.40
1,340.55
715.75
1,040.50
2,233.75
800.00

$9,085.00
255,621.00

$264,706.00

$70,314.50
191,154.07

$261,468.57
931.68

$262,400.25

penditures,
per rolls
books of
easurer.

$18,261.48
206,833.51
19,492.80
2,646.11
3,700.75
3,006.37
1,969.40
1,340.55
715.75
2,115.08
899.88
1,094.60
1,879.72
750.00

$264,706.00

$70,314.50
219,339.78

$289,654.28

$70,314.50

192,091.14

262,405.64

$219,339.78
198,261.13

$21,078.65
5,636.78

$15,441.87
$57.48

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Add.

Attorney's fees, not on rolls	$250.00
Secretary's office, not on rolls	66.56
Treasurer's office, not on rolls	1,200.00
Total br't for'd	$1,516.66
	296,415.53
Total expenditures	$297,932.19

Receipts.

From State treasurer	$97,115.48
From city of N. O.	185,493.73
	$282,609.21
Certificates rec'd for tax of 1878	426.11
Total receipts	$283,035.32

	Estimate of expenditures.	Expenditures, rolls & books, treasurer.
Teachers' salaries	$231,288.00	$234,870.00
Portresses	17,544.00	16,164.65
Rents	17,256.00	16,263.00
Supt.'s office	1,200.00	1,166.20
Treasurer's office	1,200.00	1,200.00
Secretary's office	3,000.00	2,964.91
Supplies, brooms, &c	2,200.00	2,439.32
Stationery, printing, &c	2,500.00	1,122.39
Fuel	3,150.00	2,119.65
Sanitary ex'g	850.00	840.00
Stoves and repairs	1,500.00	Cont'g't. 1,295.76
Furniture repairs	12,000.00	Atty's fees. 1,000.00
		2,181.62
Repairs to schools	10,000.00	14,304.69

Schools, 1878.

State of Louisiana, "actual,"		$97,115.48
City of N. O. ½ of 1% on an ass't of $111,147,245.00		222,294.49
		$319,409.97
Actual receipts, State of La.		97,115.48
Actual receipts, city of N. O.—		
Cash	$185,500.04	
Certificates	426.11	
		185,926.15
		$283,041.63
Tax levied		$222,294.49
Collected		200,182.82
		$22,111.67
Cancellations		6,339.81
Outstanding		$15,771.86
Cash balance		$47.32

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NEW ORLEANS, *November 1st*, 1895.

Statement of the Total Expenditures for Public Schools for the Years 1873 *to* 1878, *Inclusive, and of the Amounts Liquidated, Amounts Due, and of Taxes Outstanding to Liquidate.*

		Liability.	Taxes uncollected.	Deficit.
Schools, 1873:				
Total expenditures	$463,384.62			
Total receipts	463,384.32			
			[*]23.798.13	
Schools, 1874:				
Total expenditures	477,114.02			
Amounts liquidated	412,072.43			
	65,041.59			
Less cash balance	61.14			
		64,980.45	17,803.80	47,176.65
Schools, 1875:				
Total expenditures	460,929.70			
Amounts liquidated	333,469.82			
	126,459.88			
Less cash balance	72.57			
		126,387.31	13,879.45	112,507.86
Schools, 1876:				
Total expenditures	408,820.00			
Amounts liquidated	306,251.95			
	102,568.05			
Less cash balance	74.27			
		102,493.76	18,934.48	835,559.30
Schools, 1877:				
Total expenditures	264,706.00			
Amount liquidated	262,348.16			
	2,357.84			
Less cash balance	57.48			
		2,300.36	15,441.87	[*]13,141.51
Schools, 1878:				
Total expenditures	297,932.19			
Amount liquidated	282,994.31			
	14,937.88			
Less cash balance	47.32			
		14,890.56	15,771.86	[*]881.30
		311,052.46		
Total reduction of taxes from 1873 to 1878			105,629.59	
By cancellations, judgments, &c.				$243,243.81
$44,822.30 less excess [* excess in red ink]				37,820.94
Total deficit				205,422.87

74 STATE *ex Rel.* METTAXA *vs.* ALLEN JUMEL, Aud'r. } No. 10762. Fifth D.

In this cause submitted to the court, considering the law and the evidence to be in favor of relators and for the reasons this day orally assigned in open court;

It is ordered, adjudged and decreed that there be judgment in favor of the relators Miss J. Mettaxa and Miss Augusta A. Finch

and against the defendant Allen Jumel, auditor of the State Louisiana, making peremptory the writ of mandamus hereinbef issued, so far as to command the said Allen Jumel, auditor, to is and deliver to relators, warrants for the school certificates descril in the Schedule "A" annexed to relator's petition for the follow amounts:

For (12 9/10 %) twelve and 9/10 per cent. of the amount of certificate for the year 1874;

For (25 9/10) twenty-five 9/10 per cent. of the amount of cert cates for 1875;

For 4/10 per cent. (40 4/10) of the amounts of the certificate the year 1876 and for the full amounts of the certificates for years 1877—1878 and 1879;

It is further ordered that the defendant pay costs.

Testimony of Mrs. Mary Pohlman, Henry Stewart, Malcolm Re Clark Steen, and W. H. Michel, for Complainant.

Filed Jan. 22, 1898.

United States Circuit Court, Eastern District of Louisiana.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

Testimony taken in the above numbered and entitled cause on half of complainants, on the 6th day of April, 1897, in the arch room of the city hall, before E. D. Saunders, special master pointed under order of court.

Appearances.

E. D. Saunders, special master.

75 Louque & Pomes, counsel for complainants.
James J. McLoughlin, counsel for defendant.

Index.

* * * * * * *

MRS. MARY POHLMAN, sworn and examined on behalf of c plainants, testified as follows:

Direct examination by Mr. LOUQUE:

Q. What is your name?
A. Mrs. Mary Pohlman.
Q. Where do you reside?
A. 1612 Saint Charles avenue.
Q. What position do you occupy in the city hall?
A. Custodian of the city archives.
Q. Will you please state whether the records which you h under your charge, and more especially the treasurer's and co

troller's reports, are the original books of these offices under your charge?

A. Yes, sir.

Q. During the last two weeks, do you remember to have seen Mr. Henry Stewart, this gentleman sitting there, and Mr. Malcolm Reach, this gentleman sitting there, examining these books?

A. Yes, sir.

Q. In this office?

A. Yes, sir.

Cross-examination by Mr. McLOUGHLIN:

Q. Do these books contain all the reports up to date, or only up to the year 1891?

A. Up to 1891?

Q. So that the books from 1891 are not up here, 1891 to 1896?

A. No, sir.

Q. You have not those books?

A. No, sir.

Counsel for complainants offers in evidence the ten books of the comptroller's office, from 1872 to 1891 inclusive, books marked from 5 to 14, of the comptroller's cash books, and treasurer book from 1890 to 1891.

HENRY STEWART, witness sworn and examined on behalf of complainant, testified as follows:

76 Direct examination by Mr. LOUQUE:

Q. You have examined the comptroller's books for what purpose?

A. For the school proportion of the tax of 1871 and 1873 and from March, 1876.

Q. Have you made any memorandums?

A. I have, in detail.

Q. Are those two books in Mr. McLoughlin's hands the memorandums which you made of the collection of the '71 and '73 tax made by the city hall from what time to what time?

A. From March 23rd, 1876, to December 31st, 1891, as per Exhibit "A."

Q. Could you take this memorandum of yours and trace up in that comptroller's book every entry which you have taken out of these books?

A. I can.

Q. Do you swear that the memorandum which is now in Mr. McLoughlin's hand, made by you, is a correct transcript of these books?

A. Yes, sir.

Counsel for complainants offers in evidence the two books marked 1 & 2, in connection with the testimony of Henry Stewart.

Cross-examination by Mr. McLOUGHLIN:

Q. Your examination ends at the book of '91?

A. Yes, sir.

Q. If any taxes of these back taxes that are included in this a still uncollected—if they have been collected since '91 would t credits have been made on these books or books now down in t comptroller's office?

A. I have nothing to do with what happened since '91.

Q. You can't say, then, from your testimony, whether or not the taxes marked here as collected, have been turned over to the sch board or for school purposes, since '91?

A. No, sir.

By Mr. LOUQUE:

Q. Mr. Stewart, look at these books and see from those books t work that you have done in the examination of these other boo so far as the city is concerned?

A. I examined 1874.

Q. You look at the whole of them and see the work that you ha done?

A. 1874, I retranscribed and rechecked, this was done by M Reach and myself.

77 Q. What Mr. Reach?

A. E. S. Reach.

Q. You rechecked it over?

A. Yes, sir.

Q. Can you testify as to the correctness of that memorandum?

A. Yes, sir, 1874.

Q. Now see about the others?

A. 1875, the same.

Q. You swear to that being the same?

A. Yes, sir. 1876, the same, in conjunction with Malcom Reac because part is his handwriting and part of mine.

Q. You swear to the part that you made?

A. Yes, sir. There is only one portion of '77 mine.

Q. From what date to what date is that portion?

A. From May, 1879, to March 9th, 1880, and then from May 2n 1877, to December 29th, 1877. 1878 is mine. From Novemb 14th, 1878, to December 31st, 1879, for the year 1878, is mine. Th item shows $1,465——

Q. Explain those entries in that book and what is the folio a what is the title of the book.

A. The title of it is " for interest from 24th day of January, d ferent interest collected on the years '73 to '78 inclusive amountin to $1,465.42 running from January 12th, '81, to January 24t 1881.

Q. Those years have been clubbed together?

A. Yes, sir, taken from the Treasurer's Book No. 11.

Q. Have you got any other?

A. No, sir.

Counsel for complainant offers in evidence these various books, 8 books, marked from 3 to 10 inclusive, in connection with the witness' testimony.

Q. Explain that rebate book, tell us what the rebate book shows.
A. The rebate book shows the prepayment of taxes from the 1st day of June of each year. 1873——
Q How much have you got for 1873?
A. I have got—there is 1873——
Q. In each item as you have got it?
A. $82.96—1873, $2,026.49: 1876, $347.48: 1875, $18,450.03: 1876, $5,343.11: 1878, $28,544.74. These rebates were partially taken by me, especially 1876 and part of 1875.

By Mr. SAUNDERS:

Q. You have taken the *pro rata?*
A. No, sir.

By Mr. MCLAUGHLIN:

Q. You have never figured the *pro rata* on the rebates?
A. No, sir.

78 By Mr. LOUQUE:

Q. Have you made a condensed statement of these various books?
A. All with the exception of the rebates.
Q. Please look at those two documents——
A. That is Exhibit "A" which refers entirely to the tax of '71 to '73, due the schools, and showing its *pro rata* of each and every year. 1871 aggregates $7,731.65 and 1873's proportion is $8,200.76—marked 11. Exhibit "B" will be marked 12, and represents the *pro rata* of interest due the schools, of 1871 to 1878. For the year 1871 it amounts to $11,835.87: 1873, $13,838.29: 1874, $10,758.48: 1875, $6,041.24: etc.

Mr. MCLOUGHLIN to Mr. Louque: I notice that you have figured on here—you have charged the city with 5 % interest on all these collections—I want to know why you charge the city with 5 % interest?

By Mr. LOUQUE: In the answer of the City of New Orleans it is claimed that this interest belongs to the city and inasmuch as the city does not admit that she was collecting this fund as an agent but retains it and claims an adverse interest to the *cestui que trust*, we claim that the City of New Orleans owes interest to us at the rate of 5 %, which is legal interest, from the time she took this money and kept it in her possession as adverse interest. That is the reason why this calculation is made, but a little later on you will see that I will not charge the city. I have got enough money without charging that at all.

Counsel for the city reserves the right of examining the books of which these extracts purport to be accurate statements and of supplementing or correcting same as the examination will show.

Counsel for the city states this is statement, exhibit marked 12, purporting to be the amounts due by the city for school poses. for collection for various uses, they have added intere the same at 5 % per annum from the date of the collection this date 1897. Counsel for the city objects to any such thi that, it is a question of law and not of fact as to whether tha terest is chargeable to the city or not.

MALCOLM REACH, witness sworn and examined on behalf of plainants, testified as follows:

Direct examination by Mr. LOUQUE:

Q. You have examined those books with Mr. Stewart?
A. Yes, sir.
79 Q. Can you swear to the correctness of the memoran you took?
A. That memorandum that I took, yes sir.

Counsel for complainant offers in evidence memorandums t by witness, in connection with witness's testimony.

Q. You heard the testimony of Mr. Stewart?
A. Yes, sir.
Q. You have been working here with him for the last two w
A. Yes, sir.
Q. All that time you were making the transcript out in the here?
A. The transcripts were made mostly at night. We took amounts from the books in the daytime and transcribed the night mostly.

By Mr. MCLOUGHLIN:

Q. You never checked up or went downstairs to compare current books?
A. No sir, these amounts were taken from the comptroller's books.
Q. Those that are here in this office?
A. Yes, sir.
Q. So that any changes that may have occurred since, by bursements of this money, since '91, wouldn't that affect your ment one way or the other—for example, suppose this $5 shown to be due by your statement—if the comptroller had year or year before last, paid that $50,000 over to the school it wouldn't show on your statement?
A. No, sir.

Counsel for defendant makes the same reservation to all mony of this kind as was made to the testimony of Mr. Stewa

CLARK STEEN, witness sworn and examined on behalf of complainants, testified as follows:

Direct examination by Mr. LOUQUE:

Q. What is your present position?
A. I am with the dock commission.
Q. What position did you occupy previous to that?
A. Previous to that I was secretary to the mayor of New Orleans.
Q. Mayor Fitzpatrick?
A. Yes, sir.
Q. What time did you commence your employment under Mayor Fitzpatrick?
80 A. In April, 1892.
Q. What did you do before that?
A. I was book-keeper in the treasurer's office.
Q. How long were you book-keeper there?
A. From August, 1890, to 1892.
Q. Did you occupy any previous position to that in the city hall?
A. I did.
Q. What position?
A. From 1881 to 1884 I was in the treasurer's office, in 1885 I was in the comptroller's office, '84 and '85.
Q. You are perfectly familiar, then, with the manner and mode of doing business with the city of New Orleans, both in the comptroller's and treasurer's offices?
A. Yes, sir.
Q. You have seen the books, handled the books and know all about them?
A. Not so much in the comptroller's office as in the treasurer's office.
Q. Have you had occasion to be appointed an expert to examine the accounts between the city of New Orleans and the school board at any time?
A. Yes, sir, I have made up a statement of the taxes collected and the amount of taxes, from '73 to '78, amount of taxes collected.
Q. Look on there and see if you recognize the report that you made to the court after your appointment?
A. Yes, sir, this is the original report.
Q. As drawn up by you?
A. Yes, sir.

Counsel for complainant offers in evidence a copy of the original report referred to by witness and made by him, to be marked 13, which it is agreed will be accepted by the city if upon examination it is found to be a correct transcript of the original.

Q. In this report which you have made the court, when do the school tax of '71 and '73——
A. I do not think I have '71.
Q. I will ask you for '73, when did the collection of taxes for

1873 cease to have been paid over by the city of New Orlea
school board?

A. I see here March 25th, 1873, to March 2nd, 1876.

Q. On that date the city ceased paying the school tax for
the school board?

A. They quit proportioning the tax for March 2nd, 187
as the tax of 1873 was concerned.

Q. Have you not had occasion to examine the reports w
printed and published at the end of every six month
81 comptroller's office, to show what they have done wi
taxes of 1873, tax of 1873?

A. I know for a fact from my employment in the comp
office, that the tax of '73 is not divided but it is just bulke

Q. In other words, the city has kept the whole of the co
since the 2nd of March, 1876?

A. Yes, sir; I know about that.

Q. You have a condensed statement in this report wh
hold before you, made to the court, which total amounts of
years of the school tax have been collected by the city of
leans for the years '73 to March 2nd, '76?

A. Yes, sir.

Q. 1874, '75, '76, '77, '78 to November 1st, 1895?

A. Yes, sir.

Q. Please tell us what is the total amount of taxes colle
school purposes by the city of New Orleans during these
years in total—before you answer that question, how did
at the school tax?

A. This you will find here, I think. The State law de
the city of New Orleans to levy a certain tax for school
which the city of New Orleans did in each of those years.

By Mr. McLOUGHLIN:

Q. What you took, though?

A. I took the tax levied. I know for a fact what tax
lected for all——

By Mr. SAUNDERS:

Q. You took the ordinance?

By Mr. McLOUGHLIN:

Q. Did you go by the ordinance or the State law?

A. I know that the ordinance complied with the State
know when the taxes of these several years, '74, '75, '76, '77
as tax collector and book-keeper I know how the divisio
made. There was so much of the total tax set aside for sch
poses and deposited to a special account for school purpose

By Mr. LOUQUE:

Q. What is the total amount of the school tax collected?

A. $1,554,131.81.

Q. What was the proportion of cash which was collected

A. Cash received and deposited to the credit of schools, $1,477,032.66.

Q. What was the proportion of school certificates which were cancelled, received in payment of taxes and cancelled?

82 A. They were received for taxes. $69,991.99.

Q. Does that include all school certificates received by the city of New Orleans in payment of school taxes up to the first of November, 1895?

A. It included all that appeared on the treasurer's books

Q. All the city received on the treasurer's books?

A. Yes, sir.

Q. Didn't they put everything on the treasurer's books?

A. I suppose they did.

Q. You don't suppose they were received and not entered on the books?

A. No, sir; I can't say about that; I only know about the books.

Q. Deducting the money paid to the school board in cash, adding the certificates of schools cancelled, and deducting this sum total of these two figures from the amount of the tax, what would be the difference?

A. I find a difference of $7,107.16.

Q. What is that difference?

A. $7,107.16.

Q. Yes; but what does that represent, does it represent a deficit or a surplus?

A. There was $7,107.16 turned over more than collected.

Q. What date?

A. From 1878 to 1895.

Q. By looking over this report will you state whether every year there is an excess of collection or whether in some there is an excess of disbursements over collections?

A. You take the tax of '73, that appears to have been all cash. There was $309,872.12 collected and there was $309,872.12 deposited to the credit of schools, 1873.

Q. That is up to what time?

A. Up to March 2nd, 1876.

Q. Since that time, so far as the tax of 1873 is concerned——

A. I don't find any credit on the books of the treasurer's office.

Q. For the tax of 1874?

A. The total tax collected was $302,741.91—cash deposited $284,281.57. Certificates of 1874 received for taxes $31,141.89, making a total credit of $315,423.46. I want to explain this in this way—while you find for 1874 the collection was only $302,741.91 cash and certificates you received was $315,423.46 that occurs in this way—a person had a right if they came in to pay 1874 tax, they had the right and the treasurer was compelled to receive school certificates of 1876 or 1877 in payment of the school portion of the tax of 1874. You will find '74 and '75 is in excess that way, while '76, '77, '78 are just the reverse.

83 Q. There is an excess of $7,100.00 according to this report, of money collected over money paid to the school board?

A. I don't know that. There is a discrepancy betwee
tificates and cash received from the total amount colle
1873 to 1878, whether that is in certificates or in cash
been accounted for.

Q. There is a surplus there of $7,100.00 for money coll
money paid?

A. No, there appears to me a deficit.

Q. I don't see that.

A. The tax is $1,554,131.81 and $1,547,024.65 deposi
credit of schools and the certificates taken——

Q. If you collect $1,554,131.81——

A. And only pay $1,547,024.65, that is not any surplus

Q. What do you call it?

A. I don't pay over enough.

Q. Therefore you owe to the school board $7,107.16?

A. Yes, sir. But you asked me if it was not a surplus.

Q. Yes, a surplus collected over amount paid?

A. Yes, sir. I want to be correct about it.

Q. When you say deficit you don't mean to say that
New Orleans had paid out more money than she collecte
ing to this?

A. It is just to the contrary. $7,107.16 is the differenc
the amount of taxes collected and the amount of cash de
the credit of schools and certificates received in payment
taxes of those years.

Counsel for complainants offers in evidence the who
report, to be substituted by a copy subject to the same ob
counsel for the city.

Q. Have you had occasion to examine the comptroller
from 1881 to 1895, so far as the school tax is concerned?

A. I have done that at your request recently.

Q. Let us see the result of your examination.

By Mr. McLOUGHLIN:

Q. What years has the city paid over to the school bo
money than she has collected?

A. '74 and '75.

Q. Those two years she paid over more?

A. No, not paid over more, that excess appears in this
explained.

By Mr. LOUQUE:

Q. You don't understand Mr. McLoughlin's question.
you what years has the city paid over more money——

84 By Mr. McLOUGHLIN:

Q. There are some years that the city paid to the sch
more money than she has received for taxes——

A. This statement will make it appear that the school

while only $302,741.91 there was $315,423.46 in cash and certificates of those years redeemed by the city of New Orleans.

Q. I understand now, those certificates mean the certificates of '74?

A. Yes, sir.

Q. So that for the school expenses incurred during '74 the city has overpaid about $13,000?

A. Yes, sir.

Q. She has paid out $13,000?

A. I can't say that she has paid out because the city might have received this in certificates for tax of '76.

Q. Then this statement is not so accurate?

A. Yes, sir, it shows exactly, with my explanation I think it ought to, because the tax of '74 was paid in cash or in certificates at the option of the tax-payer, but the law compelled the treasurer to receive those certificates of '76 or '77 or '78 in payment of the tax of '74 at that time, therefore the cash and certificates received does not balance with the total amount of taxes collected for that year or for any of the years.

Q. So that the accounts do not show what years certificates received were issued for, in other words, if you received during a year in payment of school tax, $50,000 school certificates, does that report show for what year those certificates were originally issued for?

A. Yes, sir, I have that here. In 1874 the city collected cash—out of $302,741.91, $284,281.57 that was cash received by the city and deposited to the credit of the school board—in addition to that cash she received, the city took in for taxes $31,141.89 of school certificates of '74.

Q. Then, that is 1874?

A. Yes, sir.

Q. Then consequently that year you received certificates of '74 and cash which added together exceed the school proportion?

A. No, sir, not the proportion.

Q. The collection of taxes——

A. The school tax collected by the city——

Q. In other words, the city is short $13,000 of that year?

A. Yes, sir. You take the total levy of '74 which was $327,386.14, the total collections were $302,741.91, so it is not more than was levied for school purposes, but the schools for '74 got credit in cash and certificates for more than the tax collected by the city of New Orleans and it was in that manner in receiving certificates of '74 for taxes for other years——

85

By Mr. LOUQUE:

Q. That is the principal of the tax?

A. Yes, sir.

Q. Now, to go back again. The question is—have you had occasion to examine the comptroller's reports in relation to the school tax from '81 to '96?

A. I did so at your request.

Q. Now, will you please state how these reports which contain the budgets of the city of New Orleans and the budget of the revenues, also the rate of taxation, how the rate of taxation was divided for the years '71, '73, '74, '75, '76, '78?

A. Either one of these reports will show that.

Q. Do those reports show it as a fact?

A. Take the report of January 1st to June 30, 1895, from page 98 to 108 gives the tax levy of the city of New Orleans.

Q. As a matter of fact, was the tax levy just according to this division which was made in that report?

A. Yes, sir.

Q. For these years '71 to '78?

A. Yes, sir.

Q. Was there any tax levy for '72 called by the name of 1872?

A. No, sir, there was no tax called by the name of 1872 or by the city of New Orleans.

Q. The taxes are '71, '73, '74——

A. Then run regularly up to the present year.

Counsel for complainant offers in evidence, in the first place, the comptroller's reports from '81 to '96 inclusive—is there one of them missing?

A. The latter half of '82 from July to December, '82.

Q. You don't make any calculation on that?

A. No, sir.

Q. You left that out?

A. Yes, sir.

Q. As a matter of fact did the city of New Orleans ever pay to the school board any of the interest which had been collected by them on the taxes?

A. No, sir, not to my knowledge.

Q. Will you please state if you have made a calculation of the interest on the school tax from '81 to '96, on school taxes collected by the city?

A. Yes, sir, that is the report I made at your request. School taxes collected January, '81, to December, 1896.

86 Q. Will you please state what time you stopped counting interest during what period, these reports were made every six months?

A. Yes, sir.

Q. Did you count the interest at the end of the six months or at the beginning?

A. I have made a statement, that shows exactly how many years and months I calculated the interest.

Q. You might as well tell us?

A. Well, I can't.

Q. Please state that this is the amount of interest not charged on the amount, charged to the city on the amount that she has received, but charged on the school taxes?

A. I have taken extracts from the books here. The date the tax was collected, then I have made up an estimate of the interest on

that portion of the tax from date of delinquency until date of payment or until near the time of payment.

Q. But that is the interest which the tax-payer was to pay to the city of New Orleans?

A. Yes, sir, the interest that the tax-payer—whether the city collected it or not this don't show.

Q. What is the amount that you have figured for varicus years?

Counsel for complainant offers the report in evidence.

A. For 1874, the interest would be four——

By Mr. SAUNDERS:

Q. What interest is that?

A. The tax-payer's interest on the 31st of March of each year—now the city collected some of the interest but all she didn't collect, but it appeared against the tax.

Q. And that interest that was paid by the tax-payers is shown on that statement?

A. No, sir, this statement shows what interest would accrue on that portion that belonged to the school at the date of payment.

By Mr. LOUQUE:

Q. As a matter of fact, some of that interest was paid to the city of New Orleans?

A. Yes, sir, but very little.

Q. Others not paid?

A. Yes, sir.

By Mr. SAUNDERS:

Q. In other words, this is an attempt to charge the city with interest that it should have collected, but did not?

A. Whether she did not, I don't know. Some of it has been collected. A small part of this interest was collected.

87 Q. Give us the years.

A. '74, $4,732.75; '75, $6,465.75; '76, $5,847.58; '77, $3,839.70; '78, $4,434.57; total, $24,859.25.

Counsel for complainants offers in evidence the report made by Mr. Steen and marked Exhibit 14, subject to the objections of counsel for City of New Orleans.

By Mr. SAUNDERS:

Q. Did you state there was outstanding and unpaid $211,000 00 in school certificates?

A. No, sir. I didn't state that because I was only on the tax. If you will take up my report you will find—for instance, you take '74. Estimates of receipts by the board was $456,100, possible receipts from the State as per estimate, $75,000; city of New Orleans as per tax levy being ¼ of one per cent. on the assessment of $327,386.14, making the total possible receipts $402 386.14.

By Mr. McLOUGHLIN:

Q. Are you familiar with the way these things were paid?

A. All these school certificates?

Q. Yes. Did the school board ever pay any certificate directly itself?

A. Oh, yes, sir, because they used to receive cash.

Q. They would pay them with cash?

A. Yes, sir.

Q. Did they ever buy up any certificates for less than dollar for dollar?

A. The report will show that. Paid face value $5,910.30 for $6,157 in certificates.

Q. They were in the habit of discounting their own certificates occasionally?

A. Yes, sir, they bought them up.

Q. That was the school board that did that?

A. It was under the direction of the school board. These purchases were made by the treasurer who was the treasurer of the city of New Orleans.

Q. Have you got anything in there of the poll taxes that were turned over to the school board, any statement of that?

A. I don't think so.

Q. You have there a judgment there, there is a judgment in connection to this report on which I suppose you figured?

A. That was a mandamus.

Q. Which adjudges that the State is responsible for 40% of certain certificates?

A. Yes, sir.

88 Q. What years are those that the State was responsible for 40% of the outstanding——

A. It is under some act.

Q. I know the act. I want to see whether you can tell me what years they are.

A. For the following amounts——

Q. What years?

A. I am going to get to that. 12 and 9 10% of the amount of the certificate- for '75; 40 and 4 10% of the amount of the certificates for 1876 and for the full amount of the certificates for 1877 1878 and 1879.

Q. That is the judgment saying the State is responsible for those percentages of those years?

A. Yes, sir.

W. H. MICHEL, witness sworn and examined on behalf of complainant, testified as follows:

Direct examination by Mr. LOUQUE:

Q. What position did you occupy in the city hall within the last four years?

A. Chief clerk of tax bureau department of the treasurer.

Q. Mr. Michel, have you had occasion to make an examination of

he sheriff's office to see what property had been sold by the city of ew Orleans for taxes prior to '78?

A. At your request I started to make an examination from the onveyance and mortgage office but the books and things were in a ondition in the sheriff's office that I didn't get to them, from the act that after reporting to you, we concluded that it was useless to nake further research in the matter.

Q. Will you please state how many pieces you investigated?

A. I investigated about five, out of the first sale of 16 pieces.

Q. What was the result of the examination?

A. They were all paid and transferred to other parties, the prop- rties have all been transferred.

Q. Do you mean the tax was cancelled?

A. The tax was cancelled and the sales were evidently cancelled om the fact of the continued transferred.

Q. In all five of them?

A. Yes, sir.

Q. And it was at this stage of your examination that you made report to me?

A. Yes, sir.

Cross-examination by Mr. McLOUGHLIN:

Q. What proportion do these 16 bear to the total amount?

A. I didn't go into such an examination.

Q. Was 1-10, 1-20 or what?

A. I didn't calculate it.

Q. You have no idea how many pieces of property were sold?

A. No, sir, it was simply a verbal report.

Q. It would be of little value as far — testifying?

A. That is a question I can't answer.

Q. How long have you been in tax collections?

A. About eight years and three months.

Q. You reported on five sales out of an examination of 16?

A. They were sales made by the sheriffs previous to 1879, not osequent to 1879.

Q. Have you any idea how many tax sales similar to those 16 re made by the sheriff?

A. I have not, sir; I saw two sales of the sheriff, I took five pieces m the two sales and made an examination of the five pieces I made my report to Mr. Louque and he came to the conclusion re was no further use to make any further examination.

By Mr. LOUQUE:

Q. What was the total amount of these taxes due to the City of w Orleans on those five pieces you investigated?

A. I didn't take down the amount, we just made that special ex- nation as to whether we should proceed in the full examination ll the sales made by the sheriff and we came to the conclusion it would be useless.

Counsel for complainant offers in evidence the two judgments the case of Gasquet and Joseph Ventor, and the two judgme marked "A" and "B."

Testimony of Chas. A. Aitkens, Expert for City of New Orleans.

Referred to in complainant's note of evidence, offered by compla ant, and filed January 22, 1898.

United States Circuit Court, Eastern District of Louisiana.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

Testimony taken in the above numbered and entitled cau
90 on the part of defendant on the 1st day of May, 1897, the archive-room of the city hall, by consent of counsel f the complainant and defendant.

Appearances.

James McLoughlin, for the city.
Louque & Pomes, for complainant.

CHARLES A. AITKINS, witness produced by defendants, was e amined by Mr. Louque:

Q. Mr. Aitkins, you have been appointed an expert on the pa of the City of New Orleans in this matter, have you not?

A. I was appointed an expert, as stated to me by Mr. McLoug lin, for the purpose of examining into the correctness of figur made by Mr. Stewart and Mr. Steen. It was a verbal appointme by Mr. McLoughlin.

Q. How many days have you been at work on this report?

A. A little over two weeks, I commenced on the 13th day April and ended on the 1st day of May. I have done a great de of night work and Sunday work, too.

Q. Have you, after making an examination of the report whi was submitted to you as made by Clark Steen and the report Henry Stewart, come to a conclusion?

A. I have.

Q. Will you please state in relation to the report of Clark Stee what difference you find in his report and your examination?

A. $157.72 less than the report made by Mr. Steen, making th sum of $6,949.44.

Q. In relation to the report of Henry Stewart, how much scho taxes have you found collected by the City of New Orleans fro the second of March, 1876, at which date the payments of that ta by the city to the school board ceased, up to the 31st of Decembe 1896?

A. $7,820.89.

Q. Please state the sum of the collections for the same dates f the school tax of '73.

A. $8,409.39. The foregoing two amounts were taken from the books of the city treasurer and comptroller by Mr. Stewart, I have examined same and found them correct.

Q. In relation to the interest actually collected by the City of New Orleans on the school tax of the different years from '71 to '78, what is the total amount of interest received by the City of New Orleans?

A. During those years, there is not any special interest on
91 school-tax account, there is an interest account for those years for the total city tax and if the same proportion of interest account for those years was taken as was given to the school fund for those years, the interest on school tax would amount, as far as I have been able to ascertain, to the sum of $46,859.70.

Q. Have you made a report of the detail amount for each year?

A. I have. It is included in my report as shown by this document (witness refers to report made by him which he holds in his hand and is restifying (testifying) from). The interest collections for the years '71 to '78 both inclusive, were taken from the books of the city treasurer and comptroller, by Mr. Stewart—I have examined same and found them correct.

Q. In making this summary did you increase the '71 interest?

A. I did not.

Q. By adding the amount of increase which the '71 tax ought to produce, that would give you an increase of $1,100, approximately?

A. I have not had time to go into a very thorough examination of this and have estimated that the interest account for the year '73 includes about $60,000 of interest collections on the tax for '71—now, as the difference between the percentage of school tax for those two years is about 22 % in favor of '71, the addition of that percentage would increase it about $13,200, 1 12 of which, the proportion of school tax for the year '73, would then make the amount of interest on the school-tax collections, $1,100 more. The interest therefore amounts to $47,959.70.

Q. Please give me the total amount of Mr. Steen's report as corrected by you, the tax of '71, the tax of '73, the interest up to the 24th of January, 1881, and the 11 dollars addition.

A. $71,139.52. At the request of Mr. McLoughlin I have examined the books of the city treasurer and of the school board for years subsequent to '78 and on both books I find that $51,186.67 had been paid to the board in excess of budget for '79 and that $242.09 had been returned to the city on account of this overpayment, leaving a balance of $4,876.58 due by the board to the city for the year '79.

Report of Charles A. Aitkins is offered in evidence by counsel for complainant.

Judgment in favor of Mrs. M. M. Fisher for $8,097.17, copied at
92 page 75 of this transcript.

Master's report on claim, copied at page 34 of this transcript.

Certified copy of petition, answer, supplemental answer, peremp-

tory exception, plea of prescription and judgment, in the ca
F. J. Gasquet *vs.* Board of Directors of the City Schools, No. 3
civil district court, parish of Orleans, Div. "B," filed April 2,
with intervention of F. J. Gasquet, and noted in complainant's
of evidence.

(Cancelled law stamp.) (Cancelled law stam

UNITED STATES OF AMERICA, }
State of Louisiana. }

Civil District Court for the Parish of Orleans.

I, Paul O. Guerin, clerk of the civil district court for the p
of Orleans, do hereby certify that the annexed documents are
and correct copies of the originals on file and of record amon
archives of my office in the matter entitled F. J. Gasquet *vs.* B
of Directors — the City Schools, under number 35156 of the d
of this honorable court.

In testimony whereof, I have hereunto set my hand and af
the seal of the said court, at the city of New Orleans, on
eighteenth day of January, in the year of our Lord one thou
eight hundred and ninety-seven, and in the 121st year of the
pendence of the United States of America.

(Signed) PAUL O. GUERIN, *Cl*

I, F. A. Monroe, presiding judge of the civil district court fo
parish of Orleans, do hereby certify that Paul O. Guerin is the
of said court, that the same is a court of record, having pr
jurisdiction, and that the signature, Paul O. Guerin, clerk, t
foregoing certificate is in the proper handwriting of him, the
Paul O. Guerin, clerk; to his official act as such, full faith
credit are due and owing; and I do further certify that his at
tion is in due form of law.

Given under my hand, at the city of New Orleans, on the
day of January, in the year of our Lord one thousand eight
dred and ninety-seven.

[SEAL.] (Signed) F. A. MONROE, *Ju*

I, Paul O. Guerin, clerk of the civil district court fo
93 parish of Orleans, do hereby certify that F. A. Monroe, w
genuine signature appears to the foregoing certificate, is
and was at the time of signing the same, presiding judge o
civil district court for the parish of Orleans, duly appointed
commissioned and qualified as such, and that said attestation
due form of law.

Witness my hand and the seal of said court, this 18th d
January, 1897.

(Signed) PAUL O. GUERIN, *Cl*

(Six cancelled law stamps.)

Petition. Filed February 25th, 1892.

To the hon. the civil district court for the parish of Orleans:

The petition of Francis James Gasquet, who resides temporarily in this city and a citizen of the State of New York, respectfully represents:

That your petitioner is the owner and holder of a number of school certificates due to him individually and also transferred to him amounting to forty-six thousand seven hundred and sixty-two 06 100 dollars, as more fully appears by said certificates and a full list thereof, hereto annexed and made part hereof.

That said certificates were issued for the unpaid salaries of school teachers and expenses of maintaining the public schools of the city of New Orleans, for the years subsequent to 1872, and prior to January, 1879.

That the liability represented by said certificates was incurred by the Board of Directors of the City Schools, a corporation duly created by the laws of Louisiana, and a citizen of said State.

That said certificates are made payable out of the school tax levied by the city of New Orleans prior to 1879; that said certificates are still due and remain unpaid.

Wherefore petitioner prays that the Board of School Directors of the City School- of the City of New Orleans, through E. B. Kruttschnitt, Esq., president thereof, be cited hereto and after due proceedings that judgment be rendered in favor of your petitioner and against the said board, for the sum of forty-six thousand six hundred and forty-two 06 100 dollars, with legal interest from judicial demand and all costs of suit, payable out of the school tax levied by the city of New Orleans, prior to 1879, and petitioner prays for general relief, &c.

(Signed) CHAS. LOUQUE, *Att'y.*

94 *Answer. Filed March 2nd*, '92.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

Now comes into court The Board of Directors of the City School- made defendant herein and reserving the benefit of any and all exceptions to which it may be entitled for answer to plaintiff's petition denies all and singular the allegations in said petition contained.

Wherefore defendant prays to be hence dismissed with judgment in its favor and for costs.

(Signed) CARLETON HUNT,
City Att'y, ex Officio Att'y Board of Directors of the City School.

No. 35156.

Civil District Court, Div. "B."

Now into this hon. court comes The Board of Directors o
Schools, made defendant herein, and with leave of court fi
tained for the filing hereof, and for supplemental and amend
swer to plaintiff's petition, says:

That defendant reiterates the answer hereinafter filed, an
further and supplemental answer, says:

1st. That this defendant is not responsible for any of the ac
or done, nor any of the debts incurred by the board of s
directors, which issued the certificates which are herein su
and that no judgment can be rendered against this defe
thereof.

2nd. That under the provisions of law regulating the f
board of school directors, the certificates which they issued
only be paid out of the funds collected from the school ta
the various years set forth in plaintiff's petition and that the
ancient are required to be paid first before subsequent certif
can be paid, and subsequently, that a judgment *in solido* as p
for by plaintiff, would be in violation of law.

Wherefore defendant prays for leave of court to file this su
mental and amended answer, and after due trial, that the
judgment in its favor and against plaintiff, dismissing this suit
cost, and defendant prays for general and equitable relief.

And defendant as in duty bound will ever pray.

(Signed) E. A. O'SULLIVAN, *City A*

95 *Order.*

Let this supplemental and amended answer be filed as p
for, and according to law.

New Orleans, May 2nd, 1892.

(Signed) FRED. D. KI

F. A. GASQUET
vs.
BOARD OF DIRECTORS OF CITY SCHOOLS.

Now into this honorable court comes the Board of Directo
City Schools, and peremptorily excepts to this action, and for
of exception, says:

1st That the plaintiff's petition sets forth no cause of a
against this exceptor.

2nd. That this action, if any lies, is barred by the prescripti
ten years.

Wherefor- exceptor prays that these exceptions be maintaine
this suit be dismissed at plaintiff's cost.

E. A. O'SULLIVAN, *City A*

Civil District Court, Div. "B."

F. J. GASQUET
vs.
BOARD OF DIRECTORS THE CITY SCHOOLS. } No. 35156.

Now comes defendant and pleads in defense of this action that the instruments herein sued on are prescribed by the prescription of five years.

Wherefore defendant prays that this plea be maintained and this suit dismissed at plaintiff's cost, and for general relief.

E. A. O'SULLIVAN, *City Att'y.*

Judgment.

The rule herein taken by plaintiff to have judgment rendered in accordance to the opinion of the supreme court herein filed came on this day for trial.

Present: Louque & McGloin, attorneys for plaintiff; defendant absent and not represented.

96 When after hearing pleadings, evidence and counsel, the law and the evidence being in favor of the plaintiff and for the reasons orally assigned,

It is ordered that the said rule be made absolute and accordingly that the following judgment be rendered.

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, F. J. Gasquet, and against defendant, The Board of Directors of the City Schools, in the sum of forty-four thousand nine hundred and seventy eight 74/100 dollars ($44,978.74/100) with legal interest from judicial demand and costs of suit payable out of the school taxes levied by the city of New Orleans prior to 1879.

That said Board of Directors of the City Schools do pay to plaintiff the aforesaid sum of forty-four thousand and nine hundred and seventy-eight 74/100 dollars ($44,978.74/100), upon the surrender of the certificates herein sued on by plaintiff and defendant to pay costs.

Judgment rendered March 20th, 1893.

Judgment signed April 17th, 1893.

(Signed) FRED. D. KING, *Judge.*

A true copy.

[SEAL.] (Signed) P. J. KELLY, *Dy Clk.*

Master's Report upon Judgment in Favor F. J. Gasquet.

Copied at page 34 of this transcript.

Judgment in favor of Mary Quinlan in case of Mary Quinlan *vs.* Board of Directors of the City Schools; No. 53102, civil district court, parish of Orleans.

Referred to in complainant's note of evidence and filed December 29, 1897.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I hereby certify, that on the 26th day of November, 189 ment was rendered in this court in the following-entitled the words and figures following, to wit:

(Cancelled law stamp.)

MARY QUINLAN
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS. } No. 53

This case came on for trial this day.

97 Present: Chas. Louque, Esq., for plaintiff, and J. Loughlin, Esq., for defendant.

When after hearing pleadings, evidence and counsel, the l evidence being in favor of plaintiff and for the reasons or signed by the court,

It is ordered, adjudged and decreed that there be judgr favor of plaintiff Mrs. Mary Quinlan and against the Bo Directors of the City Schools for the sum of five thousan hundred and seventy-three 78 100 dollars and costs.

Judgment rendered November 26th, 1897.

Judgment signed December 2d, 1897.

(Signed) T. C. W. ELLIS, J

In testimony whereof, I have hereunto set my hand and the seal of the said court, at the city of New Orleans, this day of November, in the year of our Lord one thousand eig dred and ninety-seven.

[SEAL.] (Signed) PAUL O. GUERIN, C

Judgment in favor of Jean Pomes in case of Jean Pon Board of Directors of the City Schools, No. 52950, civil distric parish of Orleans.

Referred to in complainant's note of evidence and filed De 20, 1897.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I hereby certify, that on the 26th day of November, 1897 ment was rendered in this court in the following-entitled the words and figures following, to wit:

(Cancelled law stamp.)

JEAN POMES
vs.
BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS, PARISH of Orleans. } No. 52950.

This case came up for trial on this day.

Present: Chas. Louque, Esq., for plaintiff; J. J. McLoughlin, Esq., for defendant.

And after hearing pleadings, evidence and counsel, the law and the evidence being in favor of plaintiff and against the defendant and for the reasons orally assigned,

It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, Jean Pomes, and against the defendants, The Board of Directors of the Public Schools, Parish of Orleans, for the sum of six thousand three hundred and fifteen 73 100 dollars with legal interest from judicial demand until paid and all costs of suit, the whole payable out of the school taxes for the years prior to 1879, when collected by the city of New Orleans.

Judgment rendered November 26th, 1897.

Judgment signed December 2d, 1897.

(Signed) F. A. MONROE, *Judge.*

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this second day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] (Signed) PAUL O. GUERIN, *Clerk.*

Judgment in favor of Georgiana T. Young in case of Georgiana Theresa Young, wife of Philip J. Friedrichs, and *al. vs.* School Board, No. 12339, civil district court, parish of Orleans.

Referred to in complainant's note of evidence and filed December 29, 1897.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I hereby certify, that on the 26th day of November, 1884, judgment was rendered in this court in the following-entitled suit, in the words and figures following, to wit:

(Cancelled stamp.)

GEORGIANA THERESA YOUNG, Wife of Philip J. Friedrichs, and *al.*
vs.
SCHOOL BOARD. } No. 12339.

This case fixed this day.

It is ordered, adjudged and decreed that the City of New Orleans pay to the several pl'ffs herein:

Georgiana T. Young.....
Lizzie G. Wheelright.....
Mary A. Sullivan.....
Francis Johnson, transferee of Mary O'Donnell.....

99 without interest and payable in accordance with sec. 2
No. 67 of 1884.
Judgment rendered Nov. 26th, 1884.
Judgment signed Dec. 2nd, 1884.
(Signed) F. A. MONROE, J

In testimony whereof, I have hereunto set my hand and
the seal of the said court, at the city of New Orleans, this fi
of December, in the year of our Lord one thousand eight h
and ninety-seven.
[SEAL.] (Signed) PAUL O. GUERIN, C

Judgment in favor of Mrs. Fortier in case of Mrs. For
Board of School Directors, No. 28801, second city court
Orleans.
Referred to in complainant's note of evidence and filed De
20, 1897.

(Cancelled law stamp.)
State of Louisiana,
Second city court of New Orleans.
Hon. Gabriel Fernandez, judge.

I hereby certify, that on the 22d day of October, 1897, ju
was rendered in this court in the following-entitled suit,
words and figures following, to wit:

MRS MARY FORTIER
vs.
BOARD OF SCHOOL DIRECTORS FOR THE PARISH OF Orleans. } No.

Claim filed June 23d, 1897.

Claim thirty-two dollars 19 100 cents as per petition and
certificate issued for November, 1876, to Miss M. Grace, 3d
the Webster school.
Citation issued and served June 25th, 1897.
Supplemental petition filed July 5 97.
Citation waived.
Answer of board of directors filed July 7th, 1897.
Notice of trial issued October 14th and served on 16, 1897.

This cause came on this October 22d, 1897, for trial; prese
Lougue, att'y for plaintiff; Jas J. McLoughlin, att'y for defe
when after hearing the law and the evidence and argum
counsel,

100 It is ordered, adjudged and decreed that there be judgment in favor of plaintiff, Mrs. Mary Fortier, duly authorized and transferee and against defendants, The Board of Directors of the Public Schools of the Parish of Orleans for the sum of thirty-two 16/100 dollars, it having been proven on trial of this case that the transfer of the certificate cannot be found, oral proof of transfer accepted by the court. Said judgment to bear interest at the rate of five per cent. per annum from June 23 '97, and costs.

(Signed) G. FERNANDEZ, *Judge*.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this 19th day of November in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] (Signed) CHAS. CUNEO, *Clerk*.

Court-house, 322 Exchange alley.

EXHIBIT PETITION OF JOSE VENTA IN CIVIL DISTRICT COURT, PARISH OF ORLEANS.

Filed April 2nd, 1897.

Civil District Court, Division "E."

JOSE VENTA
vs.
BOARD OF SCHOOL DIRECTORS. } No. 37364

Petition.

Filed May 26th, 1892.

To the honorable the civil district court for the parish of Orleans:

The petition of Jose Venta, a citizen of the Kingdom of Spain, residing temporarily in New Orleans:

Respectfully represents:

That your petitioner is the owner and holder of a number of school certificates due to him individually and also transferred to him amounting to seventeen thousand three hundred and eighteen 46/100 dollars as more fully appears by said certificates and a complete list thereof, hereto annexed and made part hereof.

That said certificates were issued for the unpaid salaries of school teachers and expenses of maintaining the public schools, for the years subsequent to 1872 and prior to January, 1879.

101 That the liability represented by said certificates was incurred by the Board of School Directors of this city, a corporation duly created by the laws of Louisiana and a citizen of said State.

That the same are made payable out of the school tax levied by the city of New Orleans prior to 1879.

That notwithstanding due demand the Board of Directors of the City Schools refuse to pay the same.

Wherefore petitioner prays that said Board of School Directors of the City Schools of the City of New Orleans be cited hereto and after due proceedings that the judgment be rendered in favor of your petitioner and against the said board for the sum of seventeen thousand three hundred and eighteen 46/100 dollars with legal interest from judicial demand and all costs of suit, payable out of the school tax levied by the city of New Orleans prior to 1879, and petitioner prays for general relief, &c.

(Signed) CHAS. LOUQUE, *Attorney.*

Civil District Court, Division "E."

JOSE VENTA
vs.
BOARD OF SCHOOL DIRECTORS. } No. 35932.

Answer.

Filed August 4th, 1892.

Defendants, reserving their exceptions heretofore filed, and reiterating the same, deny all and singular plaintiff's allegations and they specially aver that the documents annexed to his petition were not issued in accordance with law and the city ordinances, that defendants call for strict proof of the services, for which said certificates are alleged to have been issued; that no law or ordinances authorized the issuance of said certificates, and still less at the discretion or option of the pretended officer, who purports to have signed or indorsed the same, that no judgment can, in any event, be rendered against defendants, with whom no funds have been lodged or deposited to pay any such claims, even when duly authenticated and proven, and that the plaintiff's recourse, if he proves his claim satisfactorily, is against the trust fund under the administration of the city of New Orleans in accordance with the provisions of act of 1873, No. —, and of 1874, No. —.

Wherefore respondents beg leave to file this their answer and to have plaintiff's demand dismissed with costs.

(Signed) E. A. O'SULLIVAN,
ALBERT VOORHIES,
Attorneys.

102 *Order.*

Let this answer be filed as prayed for.
New Orleans, August 4th, 1892.

(Signed) GEO. H. THEARD, *Judge.*

Judgment.

Civil District Court, Division "E."

JOSE VENTA
vs.
BOARD OF SCHOOL DIRECTORS. } No. 35932.

This case being submitted to the court for adjudication, and the law and evidence being in favor of plaintiff with the exception of the following certificate, for which judgment of nonsuit is now rendered:

It is ordered that judgment be rendered in favor of plaintiff Jose Venta, and against the Board of School Directors for the City Schools of New Orleans, La., for the sum of seventeen thousand and six 27/100 dollars, payable out of the school tax levied by the city of New Orleans, prior to 1879, with legal interest from judicial demand, *i. e.*, May 26th, 1892, and costs of suit.

It is further ordered that judgment of nonsuit be entered as to the certificates of M. Sweeney for November, 1876—$53.64; Edmond Jones, 815-606, 8.94; M. O'Brien, 54-13, 98-40.02. M. L. Toad, 64-8.38, 55.62. G. Hodgkins, 48.35-6.23-42.12. A. Raymond, 14.40, 4.77-9.63. M. D. Cooper, 72.11-52.00. R. Wheeler, 18-5.96-12.04. M. T. Lindsay, 25-8.28-16.72. M. Callaban, 36-14.54, $21.46.

Judgment rendered Feb'y 27th, 1894.

Judgment signed March 5th, 1894.

(Signed) GEO. H. THEARD, *Judge.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Civil District Court for the Parish of Orleans.

I, Paul O. Guerin, clerk of the civil district court for the parish of Orleans,

Do hereby certify that the foregoing four pages do contain a true and correct copy of the petition, answer, order and judgment in case number 35932, entitled Jose Venta *vs.* Board of School Di-
103 rectors of the docket of this honorable court, division E, Honorable Geo. H. Theard, judge. The original- of which are now on file in the archives of this honorable court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this first day of April, in the year of our Lord one thousand eight hundred and ninety-seven and in the one hundred and twenty-first year of the Independence of the United States of America.

(Signed) PAUL O. GUERIN, *Clerk.*

I, F. A. Monroe, presiding judge of the civil district court for the parish of Orleans, do hereby certify that Paul O. Guerin is the clerk of said court; that the same is a court of record, having probate

jurisdiction, and that the signature, Paul O. Guerin, clerk, to the foregoing certificate is in the proper handwriting of him, the said Paul O. Guerin, clerk; to his official act as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the first day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

(Signed) F. A. MONROE, *Judge.*

I, Paul O. Guerin, clerk of the civil district court for the parish of Orleans, do hereby certify that F. A. Monroe, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, presiding judge of the civil district court for the parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this first day of April, 1897.

(Signed) PAUL O. GUERIN, *Clerk.*

Offerings on Behalf of Mrs. Mary A. B. Gage, Intervener.

Master's reports, copies at page 32 *et sequiter*, and also at page 55 *et seq.* of this transcript.

104 Decree confirming master's report, copied at page 65 of this transcript.

Offerings on Behalf of U. Koen, Intervener.

Master's reports, copied at page 32 *et seq.*, and also at page — *et seq.*, of this transcript.

Decree confirming master's reports, copied at page 65 of this transcript.

Judgment of the civil district court for the parish of Orleans, division "D," in the suit entitled Urban Koen *vs.* Board of Directors of the Public Schools of the Parish of Orleans, No. 53833 of the docket thereof, copied at page 53 *et seq.* of this transcript.

Waiver and consent on intervener's petition herein, copied at page 54 of this transcript.

Defendant's Offerings.

Copies of all the budgets of the city of New Orleans showing estimated revenues and expenditures, for the years 1871 to 1879, inclusive.

Agreement as to Offer of Budgets of the City of New Orleans.

Filed July 5, 1898.

United States Circuit C'rt, Eastern District of La.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET ALS. } No. 12516.

In making up the transcript of appeal in this case the clerk is directed to omit the budgets of the city of New Orleans, showing estimated revenues and expenditures for years 1871 to 1879, inclusive; all parties hereto reserving the right of using the same in the appellate court, as they appear in the printed reports of the
105 comptroller of the city of New Orleans, or extracts therefrom.

(Signed) CHAS. LOUQUE.

All the record of suit No. 12060 in this court that has not already been offered by complainant, and particularly the *fi fa.*, garnishment, interrogatories and answers thereto of Charles H. Schenck, city treasurer and *ex officio* treasurer of the school board.

Record from State Court.

Filed Feb'y 23rd, 1892, in No. 12060, U. S. C. court.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

Petition.

Filed May 22nd, 1890.

MRS. M. M. FISHER & HER HUSBAND
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS ET AL.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

No. 30262, Division "D."

To the honorable the civil district court for the parish of Orleans:

The petition of Mrs. M. M. Fisher, born Blackadder, duly authorized and assisted by her husband, M. M. Fisher, who appears herein for said purpose and joins his said wife herein, both citizens of the Kingdom of Spain, and residing in the island of Cuba,

Respectfully represents:

That your petitioner is the owner and holder of a number of school certificates in her own name and transferred to her, amounting in the aggregate to the sum of eight thousand and ninety-seven 17/100 dollars as more fully appears by said certificates and a complete list thereof, hereto annexed and made part hereof.

106 That said certificates were issued to the school teachers for work actually performed in teaching the children in the city of New Orleans, attending the public schools.

That said teachers were appointed by the board of school directors of this city — by said board employed for said purpose.

That said amount is actually due and owing and notwithstanding due demand the said board of school directors refuse to pay same.

That the State's portion has been paid, and the city's portion remains due.

That a tax called the school tax was ordered levied by the legislature under acts No. 48 of 1873, and 123 of 1874, to pay the same. That the city of New Orleans levied in accordance with said acts the said tax of 74 of 1 % during the years 1874, 1875 & 1876, and said tax is now still in process of collection.

That under the act of 1874, the city was ordered to keep said tax separate and apart for each year, but the same was mixed and mingled by the miscellaneous ordinances of the constitution of 1879, with all school taxes levied for years previous to 1880. Wherefore petitioner prays that the President of the Board of Directors of the City Schools of New Orleans and Jos. A. Shakespeare, mayor of New Orleans, be cited hereto and after due proceedings, that your petitioner recover judgment against the Board of Directors of the City Schools in the sum of eight thousand and ninety-seven and 17/100 dollars with legal interest from judicial demand payable out of the school tax, levied prior to 1879, by the city of New Orleans, and she prays for general relief, &c.

(Signed) CHAS. LOUQUE, *Attorney.*

Answer of City Attorney.

Filed June 2nd, 1890.

MRS. M. M. FISHER & HER HUSBAND
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS ET AL.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

No. 30262, Division "D."

Now comes into court the defendants, and reserving the benefits of any and of all exceptions to which they may be hereinafter entitled, for answer to plaintiff's petitions deny all and singular the allegations in the said petition contained.

Wherefore defendants pray for judgment in their favor and that said petition be dismissed with costs.

107 And defendants will ever pray as in duty bound.

(Signed) CARLETON HUNT,
City Attorney, ex Officio Att'y for Defendants.

Judgment.

Civil District Court for the Parish of Orleans, Division "D."

MRS. M. M. FISHER & HER HUSBAND
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS *et al.* } No. 30262.

The law and the evidence being considered and for the reason on file,

It is ordered, adjudged and decreed that there be judgment in favor of the plaintiffs, Mrs. M. M. Fisher, recognizing her as a creditor of the school fund of the city of New Orleans, for the sum of eight thousand and ninety-seven 17/100 dollars, with legal interest from judicial demand, till paid, to be paid in due course out of the school tax levied prior to 1879.

Judgment rendered June 23rd, 1891.

Judgment signed June 29th, 1891.

(Signed) N. H. RIGHTOR, *Judge.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *January 4th*, 1892.

The court met pursuant to adjournment.

Present: Their honors Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, associate justices.

Absent: Edward Bermudez, chief justice.

His honor, Mr. Justice Breaux, pronounced the opinion and judgment of the court in the following cases:

Filed February 23rd, 1892.

MRS. M. M. FISHER & HER HUSBAND
vs.
BOARD OF DIRECTORS OF — NEW ORLEANS ET AL. } No. 10888.

Appeal from the civil district court for the parish of Orleans.

108 Plaintiff sues as owner of school certificates to recover the sum of eight thousand and ninety-seven 17/100 dollars, with legal interest from judicial demand.

These certificates were issued to teachers in 1874, 1875 and 1876

by the board of directors of the public schools for salaries earned during those years.

The petitioners pray for a judgment against the Board of Directors of the City Schools payable from the school tax levied prior to 1879, by the city of New Orleans.

The defendants deny any indebtedness.

Judgment was rendered recognizing plaintiff as a creditor of the school fund of the city of New Orleans for the amount claimed with legal interest from judicial demand, to be paid in due course, out of the school tax levied prior to 1879.

From this judgment the School Board and Mayor of the City of New Orleans appeal.

Plaintiff does not contend that her certificates are due by the City of New Orleans, but sues, she states in her brief, "to have whatever claims she has against the school fund recognized and paid whenever the city (is) *if* enabled to collect those funds.

Under the school law as it was when those certificates were issued the city cannot be held as a*n* debtor of the said plaintiff.

The school board was an independent authority organized under a separate act of incorporation vesting them with distinct functions, free from all other local government.

The schools were not city schools, but schools established by the State to instruct the children in the several parishes.

They were styled the common school- of the State and were placed under the management of a "State board of directors."

The State was divided into six school divisions and superintendents were appointed in each with salaries payable by the State treasurer out of the public school fund.

The members of the school board for the city *was* (were) appointed by the State board of education.

Those boards employed teachers, fixed salaries and incurred expenses for which they were responsible.

They also issued certificates to teachers, representing their salaries.

The statute required an estimate of debts and expenditures by this board in October, each year, which was submitted to the city council.

The latter complied with the requirements and during the years 1874, 1875 and 1876, the sum of $844,677 was collected for the schools, and there was deposited in the hands of the school treasurer an amount of cash and certificates which more than balanced the said amount collected.

109 The records disclose that in compliance with an ordinance to carry into effect provisions of act 49 of the General Assembly of 1880, the authorized officers of the city of New Orleans received in payment of municipal taxes due anterior to 1879, a part of the school certificates prior to that year.

There are uncollected balances for the schools due by tax debtors which will form a part of the fund for the payment of teachers' salary of 1874, 1875 & 1876.

The question is one of recognition of the claim *vel non*.

Judgment against the school board recognizing the claim serves every purpose of a recognition.

This body has authority to pass on the validity of any evidence of indebtedness against the school fund, to stand in judgment, to institute and defend suits.

One of its creditors has no right of action against the city of New Orleans, to compel her to recognize the validity of a claim.

If she fails to comply with the law relating to schools funds, the board has authority to enforce compliance.

It is not suggested by the pleadings, there has been any failure in this respect.

This court has decided that there is "no privity between the city of New Orleans and the holders of school certificates, who are exclusively creditors of the school board."

Labatt *vs.* New Orleans, 38 Ann., 289.

The holders of these certificates had, under act 36 of 1873, the right to recover payment out of the funds in the hands of the school treasurer levied for the years during which the salary was earned.

Under that act the board, in contracting debts, was limited to the revenue of the year during which the salary was earned.

Similar restriction is contained in act 123 of 1874.

According to the term of the last-mentioned act the remainder after payment of the year for which collected was to be applied to the expenses of the succeeding year.

Under act 49 of 1880, school certificates issued for 1874, 1875, and 1876 were made receivable for any taxes due prior to 1879.

This had the effect of creating one fund for school indebtedness prior to said year.

Under the present law, act 81 of 1888, the Board of Directors have no authority to bind the city to the payment of any amount.

They administer school affairs without any possible control on the part of the city authorities.

The treasurer of New Orleans is *ex officio* treasurer of the board and receives all funds collected for the support of the public school.

110 Upon him devolves the payment of pay-rolls and evidence of indebtedness to teachers and other employees of the board.

He pays upon the order of the school board.

Judgment against the school board for recognition of the claims serves every needful purpose for which suit has been brought.

The judgment appealed from is amended by dismissing the claim against the city and affirming the judgment against the Board of School Directors.

As amended judgment is affirmed at appellee's cost.

Rehearing refused.

The judgment having become final the foregoing is a true copy of the original opinion and judgment rendered in the case of—

MRS. M. M. FISHER & HER HUSBAND
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS *et al.* } No. 108

February 10th, 1892.
(Signed) C. W. BUCHANAN,
Deputy Clerk

Syllabus.

The Board of Directors of the Public Schools of New Orleans ha
the control of the public funds placed in their charge for the ma
tenance of the schools.

It devolves upon the board to compel corporations to comply w
their ordinances levying taxes for the schools, if they fail to comp
with their obligations in this respect.

The Board of Directors of Schools has authority to stand in ju
ment to institute or to defend suits.

A creditor of the school board has no right of action against t
city of New Orleans to compel the city to recognize the validity
his claim.

School certificates of indebtedness by the Board of Directors
the Public Schools for the years 1874, 1875 and 1876 are not de
of the city of New Orleans and actions for the purpose of havi
them recognized as valid claims can be maintained against
school board as it is authorized to pass upon the validity of t
evidence of indebtedness of every one who alleges that he is
creditor.

The city of New Orleans turns over amounts collected for scho
to the treasurer of the school board. This officer notes the taxes
the different years an applies the amount to the payment of cert
cates from the taxes of those years from which the creditors are e
tled to payment.

A true copy.
(Signed) TH. BUISSON,
Deputy Clerk

111 *Citation. Issued Feb'y 23, 1892.*

UNITED STATES OF AMERICA, }
Eastern District of Louisiana. }

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, New Orleans Division.

MRS. M. M. FISHER & HUSBAND
vs.
THE BOARD OF DIRECTORS OF THE CITY SCHOOLS of New Orleans. } No. 12060.

The President of the United States of America to E. B. Kruttschnitt, president of the Board of Directors of the City Schools of New Orleans, Greeting:

You are hereby summoned, to comply with the demand contained in the petition of which a copy accompa-ies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 23 day of February, A. D. one thousand eight hundred and ninety-two, and Independence of the United States of America the 116th year.

Teste:

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Indorsed: No. 12060. United States circuit court, fifth circuit, eastern district of Louisiana. Mrs. M. M. Fisher and Husband *vs.* The Board of Directors of the City Schools of New Orleans. Copy of petition and citation inside to be served on —— ——.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Feb'y 23, '92, and on the 24th day of same month and year I served certified copy hereof and accompanying petition on the Board of Directors of the City Schools of New Orleans, by handing them to Hon. E. B.
112 Kruttschnitt, president of the board, in person, in New Orleans, La.

J. B. DONNALLY,
U. S. Marshal,
By JAMES R. PINNEGRE,
D'y U. S. Marshal.

Exceptions of City of New Orleans.

Filed March 12th, 1892.

MRS. M. M. FISHER ET AL. *vs.* CITY OF NEW ORLEANS. } No. 12060.

Now comes the City of New Orleans and for exception to plaintiffs' petition pleads:

That the plaintiff is not the owner of the judgment herein s on, and cannot sue thereon, and that the said judgment is ow by citizens of Louisiana and residents of New Orleans who have right to maintain an action herein upon said judgment against fendant, defendant being likewise a citizen of Louisiana and defe ant says that the names of the owners of the said judgment are forth in the exception previously filed herein, and defendant re to the same for the names in question.

That the judgment herein proceeded upon sets forth no caus action.

That no action will lie to enforce the judgment herein sued up That no action upon a judgment will lie in this court, except w the same is a foreign judgment in the sense that it has been dered in another country or State than the State of Louisiana where the debtor is dead and his estate is under administrat and that the action of plaintiff does not fall within either of categories.

Wherefore exceptor prays that the said exceptions be maintai and the plaintiffs' suit dismissed with costs.

(Signed) CARLETON HUNT,
City Attorne

113 *Fi. Fa. Issued Feb'y* 15, 1893.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Circuit, Hold Sessions in and for the Eastern District of Louisiana.

The President of the United States to the marshal of the east district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded to demand from the Board of Dir ors of the City Schools of New Orleans the sum of eight thous and ninety-seven 17/100 dollars with 5 % interest per annum fr May 22, 1890, payable out of the school tax levied by the city New Orleans prior to 1879 and clerk's costs, $26.00, attorney's doc fee, $20, marshal's costs, cash, which Mrs. M. M. Fisher and husband, M. M. Fisher, lately recovered by judgment of the cir court of the United States for the fifth circuit and eastern distric Louisiana, and if the same be not paid on demand, that then

cause the same to be made out of the personal estate of the said Board of Directors of the City Schools of New Orleans in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said Board of Directors of the City Schools of New Orleans in your district, and that you have those moneys before our said court to render to the said Mrs. M. M. Fisher and her husband, M. M. Fisher, for the judgment aforesaid, on the 70 day from the date hereof, together with this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 15 day of February, A. D. 1893, and 117 year of the Independence of the United States.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Indorsed: No. 12060. U. S. circuit court, eastern district of Louisiana. Mrs. M. M. Fisher *vs.* Board of School Directors. *Fi. fa.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Feb'y 15, '93, and on the same day I made demand upon the Board of School Directors of the Parish of Orleans by serving written notice on Mr. E. B. Kruttschnitt, president of said board, in person, in the parish
114 of Orleans, La., who informed me that he had no funds in his hands with which to pay this writ.

I then notified counsel for plaintiff herein of my actions in the premises and was directed by him to return this writ *nulla bona.*

J. B. DONNALLY,
U. S. Marshal.
By T. J. GALBRETH, *D'y.*

Fi. Fa. Issued July 12, 1894.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Circuit, Holding Sessions in and for the Eastern District of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded to demand from the Board of Directors of the City Schools of New Orleans the sum of eight thousand and ninety-seven 17/100 dollars with 5% interest per annum from May 22, 1890, payable out of the school tax levied by the city of New Orleans prior to 1879 and clerk's costs, $26.00, attorney's docket fee, $20.00, marshal's costs, cash, which Mrs. M. M. Fisher and her husband, M. M. Fisher, lately recovered by judgment of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said

Board of Directors of the City of New Orleans in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said Board of Directors of the City Schools of New Orleans in your district, and that you have those moneys before our said court to render to the said Mrs. M. M. Fisher and her husband, M. M. Fisher, for the judgment aforesaid, on the 70 day from the date hereof, together with this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of July,
115 A. D. 1894, and 119 year of the Independence of the United States.

[SEAL.] E. R. HUNT, *Clerk.*

(Indorsed:) No. 12060. U. S. circuit court, eastern district of Louisiana. Mrs. M. M. Fisher, *fi. fa., vs.* The Board of School Directors.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., July 12, '94, and on the same day I served notice on Chas. H. Schenck, city treasurer and *ex officio* treasurer of school board for the parish of Orleans, ordering and requiring him to pay into my hands all moneys held by him as treasurer aforesaid, and which had been collected by the city for school purposes prior to the year 1879.

In pursuance of said notice and order to pay the said Charles H. Schenck, in his official capacity as hereinbefore stated, did on July 28th, 1894, pay into my hands the following amounts, viz:

Am't of school tax collected for the year 1874.....	120.12
Am't of school tax collected for the year 1875.....	429.21
Am't of school tax collected for the year 1876.....	372.57
Am't of school tax collected for the year 1877.....	582.68
Am't of school tax collected for the year 1878.....	388.51
	$1,893.09

Which I paid to Charles Louque, attorney for plaintiff, to be credited in the judgment in this case, after deducting the costs for executing this writ.

There being no further collections to be made hereon, by instructions of pl'ff's attorney I return this writ in accordance with the above facts.

Aug. 12, '94.

J. V. GUILLOTTE,
U. S. Marshal,
By T. J. GALBRETH, *D'y.*

Notice of Seizure.

July 12, 1894.

Office of the United States marshal, eastern district of Louisiana.

NEW ORLEANS, LA., *July 12th*, 1894.

MRS. M. M. FISHER
vs.
THE BOARD OF DIRECTORS OF THE PUBLIC SCHOOLS of the City of New Orleans. } No. 12060.

116 In the U. S. Circuit Court of the Eastern District of Louisiana.

To Charles H. Schenck, city treasurer of the city of New Orleans and *ex officio* treasurer of the Board of School Directors of the City of New Orleans:

Please take notice that by virtue of a writ of *fieri facias* issued in the above-mentioned suit by the hon. court aforesaid and to me directed I seize in your hands a sufficient amount of the funds of the taxes collected by the city of New Orleans, Louisiana, for school purposes and levied for the period prior to the year 1879 to pay and satisfy the judgment herein rendered, amounting to the sum of eight thousand and ninety-seven dollars and seventeen cents with 5 % per annum interest thereon from the 22nd day of May, 1890, and all costs, which you may now have or hereafter have in your possession or under your control for said period, and which you will hand over to me.

J. V. GUILLOTTE,
U. S. Marshal,
By ALCEE LE BLANC,
Deputy U. S. Marshal.

Citation in Garnishment.

Issued July 12, 1894.

UNITED STATES OF AMERICA,
Eastern District of Louisiana.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, New Orleans Division.

MRS. M. M. FISHER
vs.
BOARD OF SCHOOL DIRECTORS OF THE CITY OF N. O. } No. 12060.

The President of the United States of America to Chas. H. Schenck, city treasurer of the city of New Orleans and *ex officio* treasurer of the Board of School Directors of the City of N. O., garnishee:

You are hereby cited to declare on oath, what property or effects belonging to defendant in this case you have in your possession or

under your control, or in what sum you are indebted to said defendant, and also, to answer in writing under oath, the interrogatories annexed to the supplemental petition of which a copy accompanies this citation, and deliver your answer to the same in the office of the clerk of the circuit court of the United States, for
117 the fifth circuit and eastern district of Louisiana, in the city of New Orleans, within ten days after the service hereof, otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 12 day of July A. D. one thousand eight hundred and ninety-four and of the Independence of the United States of America the 119 year.

Teste:

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La., July 12, 1894, and on the 13th day of July of the same year, I served a copy hereof, with accompanying supplemental petition, and notice of seizure on Charles H. Schenck, city treasurer of the city of New Orleans, and *ex officio* treasurer of the Board of School Directors of the City of New Orleans by handing the same to him in person, in the city of New Orleans, State of Louisiana.

(Signed) J. V. GUILLOTTE.
U. S. Marshal,
By JOS. FABACHER, JR., *Dep'ty.*

Supplemental Petition in Garnishment.

Filed July 12, 1894.

MRS. M. M. FISHER
vs.
BOARD OF SCHOOL DIRECTORS OF THE CITY OF NEW ORLEANS. } No. 12060.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The supplemental petition of Mrs. M. M. Fisher respectfully showeth:

That upon the judgment obtained in this case for the sum of eight thousand and ninety-seven 17/100 dollars with 5% interest from 22nd, 1890 and costs, petitioner has issued a writ of *fi. fa.*; and having reason to believe that Chs. H. Schenck, city
118 treasurer and *ex officio* treasurer of the School Board of the School Directors of the City of New Orleans a third person is indebted unto the said defendant in execution, or has property or effects in possession, or under control, belonging to the said debtor,

or indebted to said debtor petitioner has caused the seizure to be made in the hands of said third persons.

Therefore, petitioner prays that said Chs. H. Schenck, city treasurer of the city of New Orleans and *ex officio* treasurer of the Board of School Directors for the City of New Orleans be cited, and ordered to answer, under oath, the annexed interrogatories, and after due proceedings, condemned to pay the amount of said judgment and costs.

CHS. LOUQUE, *Attorney.*

Interrogatories.

1st interrogatory. Had you in your hands, or under your control, directly, or indirectly, at the time of the service of notice of seizure in this case, or since, or at the time of service of these interrogatories, or at any time since, or at the time of answering these interrogatories, any money, rights, credits, or other property whatsoever, directly or indirectly, belonging or due to the said defendant in execution, or in which the defendants have or had any direct or indirect interest for the whole or for a part or otherwise, and if yea, what is the nature, description and amount thereof; and is the same not sufficient to pay or satisfy the full amount of said judgment and costs; or if less, to what amount?—you being asked and required to make a full disclosure in relation to the same.

2d interrogatory. Were you not at the time of service of notice of seizure upon you in this case, or since then, or at the time of service of these interrogatories, or since, or at the time of answering the same, directly or indirectly indebted or obligated unto the said defendant in execution for anything or for any sum whatever, whether for yourself alone or altogether with others, in consequence of any sale, or exchange, or transfer, or assignment, or payment, or novation or compensation, or letting, or hiring, or service, or labor, or employment, or affreightment, or insurance, or job, or work, or rent, or interest, or partnership, or loan, or deposit, or trust, or bailment, or agency, or suretyship, or compromise, or pledge, or in consequence of any contract or obligation whatever, whether the same be due or to become, and whether the interest of said defendant in execution be direct or indirect, or be for the whole or a part only, or whether it be by bill, note or otherwise; and if yea, what is the nature, description and amount thereof, and is the same not
119 sufficient to pay or satisfy the full amount of said judgment and cost; or if less, what amount?—you being asked and required to make a full and detailed disclosure in relation to the same.

3d interrogatory. Have you at any time since the service of notice of seizure in your hands herein, made, directly or indirectly, unto or with the said defendant in execution, any payment, or novation, or compromise, or arrangement, or given them any note or other written obligation, or received from them directly or indirectly, any receipts or acquittance, or received or acquired against them directly or indirectly, any compensation, or set-off, or de-

mand, or note, or other obligation or right of action?—and if yea, state the nature, description and amount thereof, and the time, place and circumstances of the same.

4th interrogatory. Have you not in your hands certain sums of money collected from the school tax levied by the city of New Orleans for the years 1873, '4, '5, '6, '7, and '8 and out of which the judgment herein is specially made payable?

(Signed) CHS. LOUQUE, *Attorney.*

Let the within supplemental petition be filed, and let C. H. Schenck, city treasurer and *ex officio* treasurer of the School Board of School Directors of the City of New Orleans be made garnishee herein, and cited to answer the accompanying interrogatories under oath in writing and as the law directs as herein prayed for.

New Orleans, July 12, 1894.

(Signed) CHARLES PARLANGE, *Judge.*

Fi. Fa. Issued Dec. 23, 1895.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Fifth Circuit, Holding Sessions in and for the Eastern District of Louisiana.

The President of the United States to the marshal of the eastern district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded to demand from the Board of
120 Directors of the City Schools of New Orleans the sum of eight thousand and ninety-seven 17/100 dollars, with 5% interest per annum from May 22, 1890. Payable out of the school tax levied by the city of New Orleans prior to 1879 and—

Clerk's costs	$26.00
Attorney's docket fee	20.00
Marshal's costs	
Clerk's costs on this writ	1.10

cash which Mrs. M. M. Fisher and her husband, M. M. Fisher, lately recovered by judgment of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said Board of Directors of the City Schools of New Orleans in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said Board of Directors of the City Schools of New Orleans, in your district, and that you have those moneys before our said court to render to the said Mrs. M. M. Fisher and her husband, M. M. Fisher, for the judgment aforesaid, on the 70th day from the date hereof, together with this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, this 23rd day of December, A. D. 1895, and 120th year of the Independence of the United States.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

(Indorsement:) No. 12060. U. S. circuit court, eastern district of Louisiana. Mrs. M. M. Fisher and husband *vs.* Board of Directors of the City Schools N. O. *Fi. fa.* Marshal's return.

Marshal's Return.

Received by U. S. marshal, New Orleans, La., Dec. 23, '95, and on the same day I made demand upon C. H. Schenck, treasurer of the city of New Orleans, and received from him in current money of the United States the sum of three hundred and twelve dollars and fifty-six cents ($312.56), which I paid Mr. Charles Loque, plaintiff's attorney, less the costs of collection, and took his receipt for same.

The time for the return of this writ expiring on this day I return same.

J. V. GUILLOTTE,
U. S. Marshal,
By T. J. GALBRETH, *Deputy.*

121 *Bill of Exceptions.*

Filed March 26th, 1892.

MRS. M. M. FISHER, Authorized, &c., *vs.* BOARD OF SCHOOL DIRECTORS. } No. 12060.

Be it remembered, that on the trial in this case, of the exception to the jurisdiction of the court,

Counsel for defendant, The Board of School Directors, said board being a citizen of the State of Louisiana, offered to prove by witnesses, who were duly called and sworn, that the school certificates on which the judgment of the civil district court for the parish of Orleans herein proceeded upon, is based, were transferred and assigned to plaintiff for the mere purpose of suing, by persons who are likewise citizens of the State of Louisiana, and that said certificates are by plaintiff held in trust for said citizens of the State of Louisiana, who could not themselves, in their said character, have sued defendant in this court.

But on objection to the introduction of any testimony upon that issue made and raised by counsel for plaintiff that said certificates were merged in said judgment of the civil district court for the parish of Orleans, the court considering that the choses in action were merged in the judgment and that the suit was not to recover the contents of a promissory note or other chose in action but upon the judgment and that the judgment was conclusive upon the parties as to the ownership of the certificates upon which it was based, sustained the objection and excluded the testimony.

Wherefore counsel for defendant then and there took this bill of exceptions to the ruling of the court, excluding said testimony to prove the assignment and transfer unto plaintiff of said school certificates, in trust, and in order to sue, and now tenders said bill which is duly signed and sealed accordingly.

(Signed) EDWARD C. BILLINGS, *Judge.*

March 26th, 1892.

Answer of Garnishee.

Filed July 26th, 1894.

MRS. M. M. FISHER
vs.
BOARD OF DIRECTORS OF THE CITY SCHOOLS OF NEW ORLEANS. } No. 12060.

122 And now comes into court Charles H. Schenck, treasurer of the city of New Orleans and *ex officio* treasurer of the board of school directors of the said city, who in answer to the interrogatories served on him in the above entitled and numbered cause, under oath, answers as follows, to wit:

In answer to interrogatory No. 1. Yes, to the following amounts:

For the year 1874	$120.12
For the year 1875	429.21
For the year 1876	372.57
For the year 1877	582.68
For the year 1878	388.51
Making a total of	$1,893.09

In answer to interrogatory No. 2. Answered by the answer contained in the first interrogatory.

To the third interrogatory. No.

To the fourth interrogatory. Answered by interrogatory No. 1.

(Signed) CHAS. H. SCHENCK, *Treasurer.*

Sworn to and subscribed before me this 25th day of July, 1894.

(Signed) C. H. SHIELDS, *Not. Pub.*

Motion to Annul Judgment and Dismiss Suit.

Filed Dec. 11, 1897.

MRS. M. M. FISHER
vs.
THE BOARD OF SCHOOL DIRECTORS OF THE CITY OF NEW ORLEANS. } No. 12060.

On motion of Sam'l L. Gilmore and James J. McLoughlin, solicitors for The Board of School Directors of the City of New Orleans, defendants herein, and on suggestion that the bill herein

filed, together with the record and judgment of the civil district court, and of the judgment of the supreme court of the State of Louisiana, which are made part of said bill, disclose that the holders of all school warrants and certificates for which the school board is sought to be made liable in this case are each and all citizens of the State of Louisiana, many of them being, including the complainant herself, assignees of citizens of Louisiana, having acquired said warrants and certificates from citizens of Louisiana; that the complainant herself holds but an inconsiderable amount of said warrants and certificates compared with the total amount of those on which recovery is sought, that the suit is therefore substantially a controversy between citizens of the State of Louisiana and the school board of the city of New Orleans, also a citizen of the same State, and the controversy is also based on choses in action sued on by assignees themselves citizens of the State of Louisiana, and with no claim or averment that their assigns could have sued in this court; that hence it is manifest, the suit in the complainant's name is really by and for the benefit of parties incapable of suing in this court and the controversy is in all its aspects of a character not within the jurisdiction of this court; that the judgment and decree of this court hereinbefore rendered are absolutely null and void, and of no effect, because of the want of jurisdiction in this court to render said judgment—therefore the defendant now presents to the court this motion, that the judgment hereinbefore rendered in favor of complainant be declared null and void and that said judgment and decree be set aside and revoked, for all necessary orders in the premises and for general relief.

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Motion Presented in Open Court Dec. 20, 1897, *and Leave to File Refused.*

MRS. M. M. FISHER
vs.
THE BOARD OF SCHOOL DIRECTORS OF THE CITY OF NEW ORLEANS. } No. 12060.

In Equity.

On motion of Sam'l L. Gilmore and James J. McLoughlin, solicitors for defendants herein, and on suggesting to the court that since the filing of exceptions to the master's report herein defendants have discovered that the plaintiff herein is not a citizen of Spain, but, on the contrary, is a citizen of Louisiana, and on suggestion to the court that the said fact has only been discovered after diligent search by defendants, and on suggesting that because of said facts this court is without jurisdiction to try this cause and defendants desire to file the annexed plea to the jurisdiction of this court, and in order to do so desire the court to permit them to withdraw or treat as withdrawn the demurrer and answers hereinbefore filed by defendants, and on suggesting that due notice of the intention of defendants to make this application has

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been given plaintiff and interveners herein, and on suggesting that equit- and justice require that this permission be granted,

It is ordered that plaintiff and interveners show cause herein on Monday, December 20th, 1897, at 11 a. m., why the annexed plea to the jurisdiction should not be filed herein.

Notice acknowledged and service accepted.

(Signed) CHAS. LOUQUE.
(Signed) CHAS. J. THEARD,
Solicitor for E. F. Duclaux, Intervener.

All objections reserved.
Notice waived.

(Signed) E. HOWARD McCALEB,
Solicitor for Mrs. Gage and U. Koen, Int'rs.

Decree.

Decree filed February 21, 1898.

Circuit Court of the United States for the Eastern District of Louisiana.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

And this cause coming on, after full hearing of the parties and upon the bill, answer and master's report duly approved by the court and upon consideration thereof;

It is ordered, adjudged and decreed that the city of New Orleans trustee of the special school taxes levied and collected for the years 1871 to 1878 inclusive be condemned to pay pl'ff and interveners the said taxes, received and collected by her, as follows: Seventy-one thousand nine hundred and thirty-eight 78/100 dollars with five per cent. interest per annum on $71,139.60/100* from January 24th, 1881,* and on $799.18/100 from May 11th, 1896, until paid. And it is further ordered that this bill be retained for a further accounting and such orders and decrees as may be necessary.

*This decree was amended by order of court, dated April 28th, 1898, so as to only allow interest on the amount recovered,
125 to wit: $71,139.60, from February 21, 1898, the date of said decree, instead of from Jan'y 24, 1881.

It is further ordered that after deducting and paying to the solicitor herein by preference and privilege such sum as may be allowed him hereafter, that the balance be distributed and paid *pro rata*, and up to their full claims to the following-named persons, to wit:

Mrs. M. M. Fisher, $11,094.87/100 with legal interest on $8,097.17/100 from May 22nd, 1897, with a credit of $1,893.09 paid on the August, 1894.

To the same $8,802.39/100, with legal interest on $7,401.69/100 from May 22nd, 1897.

And the further sum of $5,864.64/" with legal interest on $5.140.31/100 from May 22, 1897.

F. J. Gasquet the sum of $57,059.69/100 with legal interest on $44,978.74/100 from May 22nd, 1897.

Joseph Venta the sum of $21,297.72/100 with legal interest on $17,006.27/100 from May 22nd, 1897.

Mary Quinlan the sum of $5,373.78/100 and fifteen dollars ($15.00/100) costs with 5% interest from December 2nd, 1897.

Jean Pomes the sum of $6,315.73/100 with fifty dollars (50.00/100) costs and legal interest from March 20th, 1897.

Georgiana T. Young, Lizzie G. Wheelright, Mary A. Sullivan and Mary O'Donnell, $653.12/100 with ten dollars (10.00/100) costs.

Mrs. Mary Fortier the sum of $32.19/100 and five dollars costs ($5.00/100).

Mrs. A. B. Gage the sum of five hundred and fifteen 44/100 dollars with 5% int. from Nov. 30th, 1887 and $12.00 costs.

Widow E. F. Duclax the sum of two thousand and ninety 17/100 dollars and $81.00 costs.

U. Koen the sum of twenty-two thousand nine hundred and ninety-one 07/100 dollars and $27.10/100 costs; and that the city of New Orleans pay all costs of this suit.

Judgment rendered and signed February 21st, 1898.

New Orleans, La., February 21st, 1898.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Petition of Chas. Louque for Solicitor's Fee.

Entered and filed February 21, 1898.

To the hon. the circuit court of the United States for the eastern district of Louisiana:

126 The petition of Charles Louque *pro interesse suo*, a citizen of Louisiana, respectfully represents:

That your petitioner is one of the regular solicitors of this hon. court;

That in his said capacity he has prepared the bill for Mrs. M. M. Fisher and such parties who should choose to come in said cause and share in the expense thereof against the City of New Orleans for an account of the school taxes for 1871 to 1878 levied and collected by said city.

That your petitioner has by diligent enquiry and by his ability succeeded in obtaining an account of said funds and has brought into court the sum of seventy-one thousand nine hundred and thirty-eight 78/100 dollars, with int. and costs.

That under chancery laws and the equity of this hon. court your petitioner is entitled to be paid a reasonable fee out of the funds so realized, with such lien as is accorded to a solicitor.

Your petitioner avers that as a general rule (10%) ten per cent. is allowed to solicitors in such cases;

That this matter should be referred to a master to examine and report to the court.

Wherefore he prays that the matter of this petition be referred — one of the masters of this hon. court to report upon the fee to which your petitioner as solicitor is entitled herein and he prays that said amount so reported be paid to him with such lien and privilege as is granted by law to solicitors and by preference out of the funds realized and brought into court; and petitioner prays for general relief, &c.

(Signed) CHS. LOUQUE, *Pa. Pa.*

Order of Reference on Petition.

Let, as within prayed for, the petition *pro interesse suo*, of Charles Louque, solicitor, be filed and let the same be referred to E. D. Saunders, Esq., master of this court.

N. O., February 21st, 1898.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Further Order to Master on Petition of Charles Louque, Solicitor.

In the matter of the petition *pro interesse suo* of Mr. Charles Louque in the cause of Mrs. M. M. Fisher *vs.* City of New Orleans, No. 12516 of the U. S. circuit court for the eastern district of Louisiana, which petition was referred to Eugene D. Saun-
127 ders, Esq., master, on February 21st, 1898. Let said master specially report to the court not only with regard to the value of Mr. Louque's services as solicitor in the cause, but also as to whether, in the present condition of said cause, the court can deal with the question of solicitor's fees in excess of the statutory fees.

New Orleans, La., March 3d, 1898.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Petition to be Made Party Complainant.

Filed March 2, 1898.

To the hon. the circuit court of the United States for the eastern district of Louisiana:

The petition of John Blackadder who resides in New Orleans, a citizen of the State of Louisiana, respectfully represents:

That Mary Blackadder, the wife of John Fisher, departed this life in this city on the 26th day of February, 1898, intestate.

That four children were born, the issue of her marriage with John Fisher, all of whom are minors and residing in this city with your petitioner, who is their maternal grandfather, to wit: John Blackadder Fisher now aged sixteen years; James M. Fisher aged

fourteen; William Gardner Fisher aged nine years, Robert Blackadder Fisher, aged seven years.

That John Fisher their father is now absent from this city and is in the island of Cuba.

That during his absence and until such time as he may return and be confirmed by the probate court as the natural tutor of his minor children, your petitioner desires to represent his said grandchildren in the prosecution of the suit of Mrs. M. M. Fisher and her husband against the City of New Orleans wherein a decree has been rendered in their favor on an accounting, under No. 12516 of the docket of this court.

Wherefore petitioner prays that he be appointed by this hon. court as *prochein ami* to the aforenamed minors Fisher, with power to represent them and prosecute the suit of Mrs. M. M. Fisher, No. 12516 of the docket of this court until such time as the father of said minors, John Fisher, may return to the city of New Orleans and qualify and be confirmed as their natural tutor, and petitioner prays for general relief, &c.

(Signed) CHS. LOUQUE, *Solicitor.*

Order.

Let the petition of John Blackadder be filed herein and
128 let him be appointed as the *prochein ami* of the minors John B. Fisher, James M. Fisher, William G. Fisher and Robert B. Fisher, with power to prosecute the suit of Mrs. M. M. Fisher and husband against the City of New Orleans, No. 12516 of the docket of this hon. court until such time as John Fisher, the father of said minors, may return to this city and be confirmed and qualified as their natural tutor and shall make himself a party to the said suit.

New Orleans, March 2d, 1898.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Motion for Revival and Delay for Rehearing.

Entered and filed March 5, 1898.

United States Circuit Court for the Eastern District of La.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

On motion of James J. McLoughlin, assistant city attorney, solicitor for defendant City of New Orleans, and on suggesting to the court, that since the rendition and signing of the decree herein on February 21st, 1898, the complainant herein, Mrs. M. M. Fisher, has died, the said death having occurred on Friday, February 25th, 1898, as will appear by reference to the death certificate, hereto annexed and made part hereof.

And on further suggestion to the court, that this suit abated the death of the complainant aforesaid, and defendant desire make an application for a rehearing on the decree; but that u proper parties can be made to represent the deceased complain it is impossible to do so.

It is ordered, that the bill and suit thus abated, be revived, acc ing to due process of equity, by making the legal representative the deceased, parties, and that defendant be notified thereof, reserving to the defendant the right, after such revival, ten d within which to make an application for a rehearing upon the cree rendered and signed herein on February 21st, 1898, and t meanwhile all further proceedings herein be stayed.

Order.

The within motion considered, let same be filed, and
129 notice of the same be given Charles Louque who was solicitor for complainant.

In the meantime, the court taking notice of the intention of fendant to apply for a rehearing, let further proceedings herei stayed until the further order of the court.

New Orleans, March 5th, 1898.

(Signed) CHARLES PARLANGE,
U. S. Judg

Certificate of Board of Health as to Death of Mary Fisher, Annexe Foregoing Motion and Order.

UNITED STATES OF AMERICA, }
State of Louisiana, Parish of Orleans. }

Office of the board of health, recorder of births, marriages, deaths.

Be it remembered, that on this day, to wit: the twenty-fift February in the year of our Lord one thousand eight hundred ninety-eight, and the 122 of the Independence of the United St of America, before me Edmund Souchon, M. D. president boar health & *ex officio* recorder of births, marriages and deaths, in for the city of New Orleans, and parish of Orleans, personally peared:

A. J. Leitz, an undertaker, a native of this city, residing at 2409 Tchoupitoulas street, who hereby declares that

Mary Fisher, born Blackadder, (white) a native of Virginia, a 43 years, departed this life, this day (25 February 1898) at No. 2 Chippewa street, in this city.

Cause of death, "Bright's disease."

Certificate of Dr. R. A. Bayley.

Deceased was married to John Fisher & 38 years in city.

Thus done at New Orleans in the presence of the aforesaid A Leitz as also in that of Messrs. P. H. Lanauze & L. B. Gehlbach

this city, witness by me requested so to be, who have hereunto set their hands, together with me, after the reading hereof, the day, month and year first above written.

(Signed) A. J. LEITZ.
P. H. LANAUZE.
L. B. GEHLBACH.
EDMOND SOUCHON, M. D.,
President Board of Health & ex Officio Recorder.

I do certify, the foregoing to be a true and faithful copy from the original recorded in book marked No. 115, folio 1025.

In testimony whereof, I have set my hand and affixed the seal of my office, at the city of New Orleans, this second day of March in the year one thousand eight hundred and ninety-eight
130 and the one hundred and twenty-two of the Independence of the United States of America.

[SEAL.] (Signed) P. HENRY LANAUZE,
Deputy Recorder of Births, Marriages, and Deaths, Parish of Orleans.

Rule to Rescind Order.

Entered and filed March 5, 1898.

Circuit Court of the U. S. for the East'n D't of La.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

On motion of Chs. Louque, solicitor for John Blackadder *prochein ami* of the minors Fisher and on suggestion to the court that said minors have been made parties hereto and that the order staying all proceedings herein without further restriction should be set aside;

It is ordered by the court that the City of New Orleans do show cause on Saturday the 12th of March, 1898, why said order should not be rescinded.

Marshal's Return on Rule to Rescind. Filed March 8, 1898.

Received by U. S. marshal, New Orleans, La., March 7th, '98, and on the same day I served a true copy of the within rule on the City of New Orleans through Walter C. Flower, mayor thereof by handing the same to him in person in the city of New Orleans, La.

(Signed) J. V. GUILLOTTE,
U. S. Marshal,
By JOHN EARLY.

Hearing and Submission of Rule to Rescind.

Extract from the Minutes.

November Term, 1898.

NEW ORLEANS, SATURDAY, *March* 12, 1898.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

131 MRS. M. M. FISHER *vs.* CITY OF NEW ORLEANS. } No. 12516.

This cause came on to be heard upon the rule filed by the complainant to rescind the order herein staying proceedings, and was argued by Chas. Louque, sol'r for complainant, E. H. McCaleb for interveners, and J. J. McLoughlin, ass't city attorney for City of New Orleans; whereupon after hearing the parties the court took the matter under consideration.

Remittitur of Mary Quinlan.

Filed March 12, 1898.

Circuit Court of the U. S. for the Eastern D't of La.

MRS. M. M. FISHER *vs.* CITY OF NEW ORLEANS. } No. 12516.

Into court comes Mary Quinlan who now files a remittitur, so far as the interest is concerned which has been allowed to her in the decree herein rendered.

It is therefore ordered that the remittitur now filed be entered and that the interest allowed in the decree herein rendered be and the same is hereby remitted.

Motion and Order to Make Party.

Filed and entered April 22, 1898.

Circuit Court of the United States for the Eastern District of Louisiana.

MRS. M. M. FISHER *vs.* CITY OF NEW ORLEANS. } No. —.

On motion of Chs. Louque, attorney for John Fisher, and on suggesting to the court that he has been appointed and has this day qualified as natural tutor of his minor children, John Black-
132 adder Fisher, James Miller Fisher, William Gardner Fisher and Robert Blackadder Fisher;

It is ordered by the court that John Fisher a natural tutor of his minor children be made a party complainant to these proceedings.

Letters of Tutorship.

Filed April 22, 1898.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division E.

Letters of tutorship.

Succession of Mrs. M. M. FISHER. No. 56305.

This is to certify, to all whom it may concern, that on the 14th day of April in the year of our Lord one thousand eight hundred and ninety-eight an application was made to the Honorable Geo. H. Theard, the judge of the civil district court for the parish of Orleans, division E, by John Fisher, praying that he might be admitted to take his oath as natural tutor of his minor children, John B. Fisher, Jas. M. Fisher, W. G. Fisher and Rob't B. Fisher.

Now know ye, that the said John Fisher has been confirmed as natural tutor of his aforesaid minor children and has on the 22d day of April, 1898, taken his said oath as such, and has complied with all the other requisites of the law.

Witness our hands and the seal of the civil district court, this 22d day of April in the year of our Lord one thousand eight hundred and ninety-eight.

[SEAL.] (Signed) GEO. H. THEARD, *Judge.*
(Signed) F. E. PETERSON, *D'y Clerk.*

A true copy.
(Signed) F. E. PETERSON, *D'y Clerk.*

133 *Order Staying Further Proceedings.*

Signed March 5, 1898; rescinded ——.

Extract from the Minutes, November Term, 1897.

NEW ORLEANS, FRIDAY, *April* 22, 1898.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

MRS. M. M. FISHER ET ALS. *vs.* CITY OF NEW ORLEANS. } No. 12516.

The rule of complainant to rescind, filed herein on March 5, 1898, having been considered, it is ordered that the order staying further proceedings herein signed March 5, 1898, be and is hereby rescinded.

Petition of Defendants for a Rehearing.

Filed April 23, 1898.

U. S. Circuit Court for the Eastern District of Louisiana.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } In Equity. No. 12516.

To the honorable the judge of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The petitioner of The City of New Orleans herein represented by Walter C. Flower, mayor, defendant herein, and of The Board of School Directors for the Parish of Orleans, herein represented by Ernest B. Kruttschnitt, its president, also defendant herein, respectfully shows that defendants believe that there is error to their prejudice in the decree of this honorable court herein, and they desire to, and do hereby, apply to and petition this honorable — to grant them a rehearing herein for the purpose of correcting the errors, mistakes and inadvertence in said decree; and defendants say that said decree is erroneous and to their prejudice, because:

1st.

The evidence does not warrant the decree allowing 5 % in-
134 terest on seventy-one thousand one hundred and thirty-nine 60/100 dollars ($71,139.60) from January 24th, 1881, because the master's report does not allow such interest, but expressly states that the said amount is now due, and the master's report was filed May 22nd, 1897. Hence it was error to allow interest from 1881; if due at all it is only due from the time the master says it is now due, and the master's report having found as follows, under date of May 22nd, 1897, "In my opinion, the amount the city now owes the school board for taxes collected, and other interest on the taxes collected is as above stated, $71,938.28," it is error to allow interest on this amount for a period of nearly seventeen years prior to the date of the master's report.

2nd.

It was error to allow interest at 5 % from December 2nd, 1897, on judgment in favor of Mary Quinlan, for the sum of five thousand, three hundred and seventy-three 78/100 dollars, because it will appear from the certified copy of her judgment, offered in evidence by complainant, that Mrs. Mary Quinlan's judgment bears no interest.

3rd.

It was error to allow the following costs for the reason that there is no evidence whatever in the record to show the amount which should be allowed for such costs, to wit:

Mrs. A. B. Gage $15.44
E. F. Duclaux 81.00
U. Koen 27.10

4th.

It was error for the court to decree judgment against the city for any part of the taxes of 1871, for the reason that the evidence shows that no part of complainant's claims arose during the year 1871, and further, that the act of the legislature which directed the city to impose a special tax of 1/4 % was passed in the year 1873; therefore could not affect the taxes of 1871.

Furthermore, it is error for the court to allow this decree against the city for taxes for 1871, for the reason that the complainant does not claim any share in the taxes of 1871, or any interest thereon either in her original or supplemental bill, and it was error for the court to allow her more than she claimed. Consequently the amount declared due out of taxes for 1871, to wit: seven thousand eight hundred and twenty-one 17/100 dollars, and the delinquent interest of taxes of 1871, nine thousand, three hundred
135 and thirty-two 81/100 dollars, were allowed in error, and should be deducted.

5th.

This being a suit for an accounting, the court erred in giving judgment against the city for money that she never collected, in that the judgment includes the sum of eleven thousand nine hundred and thirty-three 27/100 dollars, which the master's report states is a discount allowed by the city to the tax-payer for prepayment of school taxes, and as the bill only claims and asks that the city be compelled to pay over the actual amount of cash collected, and as this money was never collected, we submit that it was error for the court to order it paid over. This being only a suit for an accounting, judgment cannot be had in the bill for anything but actual money collected, and this money was never collected.

6th.

The evidence shows that the full amount of money collected for 1874 school taxes was turned over to the school board (see testimony of Clark Steen, and his report, offered in evidence by complainant), and such being the case it is urged that it was error for the court to make the city pay over any more money out of the taxes of 1874, the city having already paid over all that she owes on that year. Such being the case, the amount of $10,816.59 and $209.50, proportion of interest on school taxes for 1873, and the proper proportion of principal for school taxes for 1874 (to ascertain the amount of which a re-reference to the master is necessary) are not due to the school board. While it is true that all back taxes prior to 1879 are lumped into one fund, we urge that in calling for an accounting it is sufficient for the city to show, in order to be discharged as far as the taxes of any particular year are concerned, that she has paid over the full amount of taxes due the school board for that year

and having done this, with the taxes for 1874, it is error for the court to order her to turn over any more of the taxes for that year.

7th.

Complainant's judgment, No. 12060, and her other judgments are law judgments, and she has ample remedy in law; hence no right to invoke the equity side of the court.

8th.

Complainant had no right to sue the city of New Orleans because her judgments are against the school board only, and she
136 does not allege that the city owes the school board anything.

9th.

The evidence shows that in suit No. 12060 the city was garnished on July 12th, 1894, under a *fi. fa.*, and answered under oath that she had one thousand eight hundred and ninety-three 9/100 dollars to the credit of the school fund prior to 1879 on that date, and having paid that amount over to Mrs. Fisher under her judgment, it was error for the court not to hold that said payment to and acceptance by Mrs. Fisher, complainant herein, estopped her from traversing said garnishment, as she is doing by this proceeding, and the court should have held such payment and acceptance as an estoppel and *res adjudicata* concerning all collections made up to July 12th, 1894.

10th.

The court erred in approving the finding of the master that the interest or penalty on delinquent taxes formed a part of the taxes and should be turned over to the board. But even though this was correct (which — course is not admitted) we hold that the court erred in ordering the city to pay over the penalty on the taxes which she had already paid over. In any event she should not be compelled to pay over the penalty on any taxes, except on those taxes which are still in her possession. In other words the master's report shows twenty-three thousand, one hundred and eight 3/100 dollars of principal, and we submit that only the penalties on this twenty-three thousand one hundred and eight 3/100 dollars should be turned over, and not the penalties on the taxes that were turned over to the board years ago.

11th.

It was error for the court to have stricken from the records the two documents filed June 29th and July 1st, 1897, for the reason that they remained on the files from June to December without any objection on the part of the complainant and it was too late then for her to make the objection she did on December 20th, 1897. The most that should have been required of defendants was to amend the plea to the jurisdiction by affixing the solicitor's certificate.

12th.

It was error for the court to refuse to allow defendants to file affidavit and plea to the jurisdiction, *ratione personæ*, December 20th, 1897, for the reason that, under the law, such a plea can be filed at any time; furthermore as the city's plea and affidavit set up a charge of fraud against the complainant, in equity, such
137 charge having been made, supported by affidavit, it was the duty of the court to entertain the plea, to let the fraud be proven.

13th.

It was error for the court not to have allowed the plea of prescription made in the answers of defendants, for as the complainant's cause of action arose in 1873 and subsequent years, the last year being 1879, the same was prescribed by the prescription of ten years, and consequently her suit should have been dismissed on the consideration of this plea.

14th.

Her judgment, No. 12060, is based upon choses in action, and not sueable in this court, and there is no allegation that the original assignors could sue in this court; therefore the court has no jurisdiction *ratione materiæ*.

15th.

The court erred in holding that the school taxes out of which said judgments have been made payable is a trust fund levied by the city of New Orleans for the purpose of paying the expenses of the public schools of said city.

16th.

The court erred in holding that there was any privity between the city of New Orleans and Mrs. Fisher, and in holding that she has any right to claim an accounting from the city of New Orleans. Defendant city avers and declares that the only person who could call for such accounting is the said school board, the codefendant herein, and the court erred in permitting any other person than the said school board to call for such accounting.

17th.

It was error to order the whole fund ascertained by the master to be paid over to complainant and interveners in this suit, because if said fund is a trust fund, it is held for the benefit of all interested in said fund, and the only part that should be paid to complainant and interveners is their proportion of same; in other words, it was error for the court to ignore the claims of other certificate-holders not party to this suit, and who were not notified by publication, nor cited herein. And to ascertain what proportion of the fund should go to complainant and interveners herein, a rereference to the master is necessary. And petitioners show that all the facts aforesaid are apparent in the record.

Wherefore petitioners, defendants, pray that this petition for a rehearing be filed and considered, and that notice thereof be given to all parties in interest. And that after due consideration
138 and hearing that this petition be granted, and rehearing had, and that the decree hereinbefore rendered be modified, or set aside, so as to grant to petitioners the relief prayed for.

And petitioners pray for such orders, rulings, process and decrees herein as may do justice and equity to and between all parties herein involved.

And petitioners pray for all special, equitable and general relief.

(Signed) JAMES J. McLOUGHLIN,
Assistant City Attorney, Solicitor for Defendants.

Order Fixing Petition for Rehearing for April 26, 1898.

Extract from the Minutes, November Term, 1897.

NEW ORLEANS, SATURDAY, *April* 23, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

MRS. M. M. FISHER ET ALS.
vs.
THE CITY OF NEW ORLEANS. } No. 12516.

This day came J. J. McLoughlin, ass't city attorney of counsel for the defendant herein, and presented a petition for a rehearing herein, which was ordered filed and fixed for hearing on Tuesday, April 26, 1898, at 11 a. m., E. H. McCaleb, of counsel for complainant and interveners, being present and taking notice.

Plea in Abatement.

Filed April 23, 1898.

U. S. Circuit Court, East. Dist. of La.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

In the Honorable the Circuit Court of the United States for the Eastern District of Louisiana.

139 The defendant, The City of New Orleans, by protestation not confessing or acknowledging any or part of the matters or things in the said bill of complaint mentioned to be true, in such manner or form as the same are set forth and alleged, does plead thereto, and for plea says:

That the record herein shows that the plaintiffs, Mrs. M. M. Fisher, (now deceased) and her husband, M. M. Fisher, are both subjects of the Kingdom of Spain; that since the rendition of the decree herein said Mrs. M. M. Fisher has died, and her father, John

Blackadder, was authorized to prosecute this suit in behalf of the minor children of the said Mr. and Mrs. M. M. Fisher, until such time as the said M. M. Fisher could qualify as tutor. That the record further shows that said M. M. Fisher has qualified as tutor and filed his letters herein.

Now defendant shows that the said M. M. Fisher, being a subject of Spain he is unable to prosecute this suit and this suit should be abated because a state of war now exists between the Kingdom of Spain and the United States of America and all the subjects and citizens thereof.

Which matters and things the City of New Orleans avers to be true and pleads the same to the complainants' bill of complaint and humbly craves that this honorable court order the complainants to show cause herein on a day to be fixed why this suit should not be abated.

(Signed) SAM'L L. GILMORE,
J. J. McLOUGHLIN,
Solicitors.
W. C. FLOWER, *Mayor.*

I hereby certify that the foregoing plea of abatement is in my opinion well founded in law.

(Signed) SAM'L L. GILMORE,
J. J. McLOUGHLIN,
Solicitors.

STATE OF LOUISIANA,
City of New Orleans, Eastern District of Louisiana.

Before me, the undersigned authority, personally came and appeared Walter C. Flower, —, being by me duly sworn, deposes and says that he is the mayor of the city of New Orleans, and that the foregoing plea is not interposed for delay.

(Signed) W. C. FLOWER, *Mayor.*

Sworn to and subscribed before me this 23rd day of April, A. D. 1898.

[SEAL.] (Signed) WM. ANDREW COLLINS, JR.,
Not. Pub.

140 *Demurrer to Plea of Alienage.*

Filed April 27th, 1898.

Circuit Court of the U. S. for the Eastern Dist. of La.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. —.

John Fisher, the duly qualified tutor of his minor children by protestation and not confessing the matters and things contained in the plea herein filed by the City of New Orleans on the 23rd

day of April, 1898, does demur to said plea, on the following grounds:

1°. That said plea does not contain an allegation that this complainant is commorant in the enemy's territory, but on the contrary it appears from the record that said complainant is present in court and within the jurisdiction of this honorable court.

2°. That by virtue of section 4068 of the Revised Statutes of the United States and the treaty of commerce and amity between Spain and the United States entered into in 1795 and published in the Statutes at Large, v. 8, p. 144, article XIII, one year after the proclamation of war shall be allowed to the Spanish subjects for collecting and transporting their goods. That said section 4068 of the R. S. amplifies the powers thus allowed, by granting "for the recovery of his goods and effects."

3°. That under the international law the private debts of alien enemies are not the *the* subject of confiscation and only an act of Congress or a proclamation of the President of the United States can close the courts of this country to alien enemies residing in this country and no such act of Congress is alleged and no such proclamation has been made.

4°. That after judgment, no plea can be filed; that the cause is then adjudicated upon and the proper proceedings would be a bill for an injunction.

5°. That the plea herein filed is in law an odious plea and *stricti juris.*

6°. That even if it be conceded, that complainant is an alien enemy commorant in the enemy's country, which is not true, the distribution of this fund cannot for that reason be stayed, but the share accruing to your complainant would be retained by the court.

Wherefore complainant prays that for this and divers other causes, that the demurrer to the plea be sustained and the
141 plea overruled. Complainant further prays the judgment of the court whether he ought to make any further answer to said plea.

(Signed) CHAS. LOUQUE,
Solicitor for Complainant.

I hereby certify that in my opinion the above demurrer is well founded in point of law and is not interposed for delay.

(Signed) CHS. LOUQUE, *Solicitor.*

Replication to Plea.

Filed April 27, 1898.

Circuit Court of the U. S. for the Eastern Dist. of La.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

The complainant M. M. Fisher not waiving the demurrer herein filed now with the permission of the court first obtained put- at issue by this replication the truth of the allegation in the defendant's plea that he is an alien enemy.

He avers that he is a citizen of the British Empire and he now annexes proof of his everment.

Wherefore he prays that the plea in abatement be overruled and he prays for costs and general relief, &c.

(Signed) CHS. LOUQUE, *Solicitor.*

Affidavit of Chas. Louque.

Filed April 27, 1898.

Chs. Louque, being duly sworn, says that the allegation in the bill that complainant Mrs. M. M. Fisher was a Spanish subject was made by counsel from information received from her, that all the proceedings herein were conducted under the instructions of Mrs. M. M. Fisher, and it was only lately when Mr. John Fisher returned from Cuba to be qualified as natural tutor of his minor children that affiant learnt from him that he was a British subject.

(Signed) CHS. LOUQUE.

142 Sworn to and subscribed before me this 27 day of April, 1898.

(Signed) H. J. CARTER,
U. S. Commissioner.

Affidavits and Annexes Filed with Replication.

Filed April 27, 1898.

John Fisher being duly sworn says that he was born on the 20th of July, 1836, Main of Nairn, parish of Auchtergaven in the county of Perth, Scotland; that his father and mother were both natives of Scotland; that he remained in his native land until 1859 when he came to the United States; that affiant is a machinist by trade and that his occupation has called him in the island of Cuba at different periods since 1861 and that he reported himself to the British consulate in said island of Cuba and he is there registered as a British subject; that he has made an application to this court

to become a naturalized citizen of the United States on the 31st of January, 1896.

That he now annexes his certificate of birth and baptism and the certificate of his declaration to become a citizen of the U. S. as a part of this affidavit.

(Signed) JOHN FISHER.

Sworn to and subscribed before me this 27th day of April, 1898.

[SEAL.] (Signed) FRANK H. MORTIMER,
United States Commissioner.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Eastern District of Louisiana.

I, Edward R. Hunt, clerk of the said court, do hereby certify that on the 31 day of January, 1896, John Fisher, a white person, declared on oath, before the said circuit court of the United States for the eastern district of Louisiana, that he arrived in the United States in the year 1859, that it is, *bona fide*, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty whatever, and particularly to the Queen of Great Britain & Ireland being the sovereign whereof the said John Fisher was at the time a subject and that his oath is now of record in said court.

143 In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this 31 day of January in the year of our Lord 1896, and of the Independence of the United States, the 120 year.

[SEAL.] (Signed) E. R. HUNT, *Clerk*,
By H. J. CARTER, *D'y Clerk.*

Extract of an Entry in a Register Kept in the Undermentioned Parish or District.

In terms of 17° & 18° Vic., cap. 80, sect. 58, and 23° & 24° Vic., cap. 85, sect. 6.

John Fisher . Smith . Main of Nairn, had a son by his wife Emelia Dow, born July 20th, 1836, and baptised on the 4th day of August, 1836, named John.

Extracted from the register of births and baptisms for the parish of Auchtergaven, in the county of Perth, Scotland, this 17th day of October, 1882.

(Signed) DONALD CUMMING, *Registrar.*

(British postage & inland revenue stamp.)

The Registers of Births or Baptisms, Deaths or Burials, and Proclamations or Marriages kept in every Parish in Scotland prior to the 1st of January, 1820, have been transmitted, under the direction of the Sheriffs of the various Coun-

In terms of the 2d Section of the Act 23 & 24 Vic. c. 85, any Birth, Death or Marriage which shall have taken place in Scotland between 31st December, 1800, and 1st January, 1855, may be recorded at the General Registry Office, on the

es, to the General Registry Office for reservation; the portions of such regis-rs kept between the above date and he 1st of January, 1855, (when the new ystem of registration came into operation; being, in the meantime, in the ustody of the Registrars of the respective Parishes. Every person is entitled o search such Registers, and any relative nventories or Indexes in the custody of he Registrar, upon the days and during the hours of business fixed by the
144 Sheriff, or, where no special regulation has been made by him upon he subject, at all reasonable hours on any lawful day, on payment of a fee of 2s. for a General, and 1s. for a Particular Search, and to have an Extract of any Entry in the said Registers for the further sum of 2.1d., including Stamp Duty. In the case of a Particular Search, the applicant must indicate a particular name or entry; while in the case of a General Search, he does not require to specify the object of such search. Where any gratuitous search or Extract is required by or on behalf of a Pauper, the Registrar is entitled to include the cost thereof in his half-yearly account against the Parochial Board (23 & 24 Vict. c. 85, sec. 17). Every Extract of any Entry in the Register Books, kept under the provisions of the Registration Acts (18 & 18 Vict. c. 80, 18 Vict. c. 29, and 23 & 24 Vict. c. 85), duly authenticated and signed, is admissible as evidence in all parts of her Majesty's dominions without any other proof of such Entry.

authority of a warrant by the Sheriff of the County in which the event occurred, in the "Register of Neglected Entries."

The 62d Section of the Statute 17 & 18 Vic. c. 80 enacts, that "every person "who shall wilfully destroy, obliterate, "erase, or injure any Entry, or cause to "be destroyed, obliterated, erased, or "injured any such Register, or Duplicate "thereof, or any Minute, Notice, or Certificate made or given pursuant to this "Act, or shall falsely make or counterfeit, or cause to be falsely made or "counterfeited, any part of any such "Register or Duplicate, or any such "Minute, Notice, or Certificate, or shall "wilfully insert or make or cause to be "inserted or made in any such Register "or Duplicate any false or fictitious Entry of or any false statement touching "any Birth, Death or Marriage, or shall "wilfully give any false Certificate, or "falsify any Certificate, or shall certify "any Writing to be an Extract of any "such Register, knowing the same to be "false or fictitious in any part thereof, "shall be deemed guilty of an offence, "and on conviction thereof be liable to "be punished by Transportation for a "period not exceeding Seven Years, or "by Imprisonment for a period not exceeding Two Years."

Petition of Defendant for Rehearing, and Plea of Abatement Heard in Part, and Continuance.

Extract from the Minutes, April Term, 1898.

NEW ORLEANS, WEDNESDAY, *April* 27, 1898.

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, district judge.

145 MRS. M. M. FISHER ET ALS. *vs.* CITY OF NEW ORLEANS. } No. 12516.

This cause came on to be heard upon the petition of defendant for a rehearing and upon the plea in abatement filed by defendant April 23 / 1898.

Present: J. J. McLoughlin, ass't city att'y for def't; C. Louque & E. H. McCaleb, of counsel for complainant and interveners, and was argued in part and continued until tomorrow at 11 a. m.

Order Overruling Plea of Alienage.

Extract from the Minutes, April Term, 1898.

NEW ORLEANS, THURSDAY, *April 28th*, 1898.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

MRS. M. M. FISHER
vs.
THE CITY OF NEW ORLEANS. } No. 12516.

On motion of Chs. Louque, solicitor for complainant, and on suggesting to the court that the plea herein filed came too late after judgment and that the demurrer thereto should be withdrawn and on further suggestion that the complainant, John Fisher, is a British subject as appears by his affidavit and certificate of birth and baptism and his declaration to become a citizen of the United States—and the affidavit of counsel all hereto annexed and made part hereof—

It is ordered that the plea of alienage herein filed be overruled.

Order Refusing Rehearing.

Entered and filed April 28, 1898.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET ALS. }

This cause came on to be heard at this term upon the peti-
146 tion of the defendant, The City of New Orleans, for a rehearing herein and was argued by the solicitors for the respective parties;

Whereupon and on consideration thereof it is ordered that a rehearing in this cause be, and the same is hereby, refused, and the court of its own motion orders that the final decree rendered herein on February 21, 1898, be, and the same is hereby, amended so as to only allow interest on the amount recovered, to wit: $71,139.60, from February 21, 1898, the date of said decree, instead of from Jan. 24, 1881, as heretofore allowed.

The clerk will note this amendment on the margin of said decree.

New Orleans, La., April 28th, 1898.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Circuit Court.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

Motion to Transfer by J. Venta to U. Koen & Co.

Filed April 28, 1898.

U. S. Circuit Court.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

THURSDAY, *the Twenty-eighth Day of April*, 1898.

Present: The Hon. George H. Theard, judge.

JOSE VENTA
vs.
BOARD OF SCHOOL DIRECTORS OF THE CITY OF NEW ORLEANS. } No. 35932.

On motion of Chas. Louque, attorney for Jose Venta, the plaintiff herein, and on suggesting to the court that the judgment herein was transferred on the seventh day of May, eighteen hundred and ninety-four, to Messrs. U. Koen & Co., composed of U. Koen
147 and B. B. Martinez, as appears by the written transfer hereto annexed and sworn to—

It is ordered by the court that the transferrees of said judgment Messrs. U. Koen & Co. be herein recognized as the owners thereof and subrogated to all the rights of said Jose Venta.

Extract from the minutes.

(Signed) A. H. FLEMING, *D'y Clerk.*

Report of E. D. Saunders, Special Master, on Petition of Charles Louque for Solicitor's Fee.

Filed May 21, 1898.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

In Equity.

The solicitors of the persons who have intervened in this case, namely, Messrs. E. H. McCaleb, Dinkelspeil & Hart and Charles J.

Theard, have filed a written consent that ten per cent. (10 %) upon the amount recovered and brought into court, would be a reasonable and proper allowance for the services rendered by Charles Louque, Esq., as solicitor herein, Mr. J. J. McLoughlin, solicitor for the city, neither opposes nor consents, but leaves the matter to the determination of the master and of the court.

I think that the charge agreed to by the other solicitors would be a proper charge in this case, and I accordingly recommend that the court allow Charles Louque, Esq., solicitor for the complainant herein, a fee to be calculated at ten per cent. on whatever amount may be recovered and brought into court by reason of this suit, or which, by reason of this suit, may be in any manner realized to the complainant and to the interveners herein. The fee, of course, will not be paid until something shall have been recovered and brought into court or realized to the parties. I annex to this report as part hereof, the written consent of the interveners.

(Signed) EUGENE D. SAUNDERS,
Special Master.

148 United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana, New Orleans Division. In Equity.

The undersigned counsel for the intervening petitioners in this cause, hereby consent and agree that Charles Louque, Esq., shall be allowed reasonable counsel fees out of the fund recovered when brought into court for distribution in this cause, and hereby express their opinion that ten per centum (10 %) upon the amount so recovered and brought into court would be a reasonable, just and proper allowance for the services rendered by said solicitor herein.

New Orleans, February 24th, 1898.

(Signed) E. HOWARD McCALEB,
Solicitors for Mrs. A. B. Gage and U. Koen.

(Signed) DINKELSPEIL & HART,
Solicitors for H. Abraham and for Peter Johnson.

(Signed) CHARLES J. THEARD,
Solicitor for Ed. F. Duclaux.

Order Confirming Master's Report.

United States Circuit Court, Eastern District of Louisiana.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS. } No. 12516.

On motion of Chs. Louque *pa. pa.* and on suggesting to the court that E. D. Saunders, Esq., appointed special master herein, has made and filed his report on the fee to be allowed to mover, as solicitor; that said report was filed on the 21st day of May, 1898, and that more than thirty days have elapsed herein and no exception has been filed to said master's report;

It is ordered by the court that the report filed by Eugene D. Saunders, Esq., special master, on the fee to be allowed to Chs. Louque, solicitor herein, be now approved and confirmed.

(Signed) CHARLES PARLANGE,
U. S. Judge.

June 23, 1898.

149 *Assignment of Errors.*

Filed June 24, 1898.

United States Circuit Court for the Eastern District of Louisiana.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516. In Equity.

Assignment of errors.

Now comes The City of New Orleans, defendant and appellant and with its motion for appeal from the decree made February 21st, 1898, as amended April 28, 1898, makes the following assignment of errors:

I.

It was error for the court to decree judgment against the city for any part of the taxes of 1871, for the reason that the evidence shows that no part of complainant's claims arose during the year 1871, and further that the act of the legislature which directed the city to impose a special tax of ¼ % was passed in the year 1873; therefore could not affect the taxes of 1871.

Furthermore, it is error for the court to allow this decree against the city for taxes for 1871, for the reason that the complainant does not claim any share in the taxes of 1871, or any interest thereon either in her original or supplemental bill, and it was error for the court to allow her more than she claimed. Consequently the amount declared due out of taxes for 1871, to wit: seven thousand eight hundred and twenty-one 17/100 dollars, and the delinquent interest of taxes of 1871, nine thousand three hundred and thirty-two 81/100 dollars, were allowed in error, and should be deducted.

II.

This being a suit for an accounting, the court erred in giving judgment against the city for money that she never collected, in that the judgment includes the sum of eleven thousand nine hundred and thirty-three 27/100 dollars, which the master's report states is a discount allowed by the city to the tax-payer for payment of school taxes, and as the bill only claims and asks that the city be compelled to pay over the actual amount of cash collected, and as this money was never collected, we submit that it was error for the court to order it paid over. This being only a suit for an
150 accounting, judgment cannot be had in the bill for anything but actual money collected.

III.

The evidence shows that the full amount of money collected for 1874 school taxes was turned over to the school board (see testimony of Clark Steen and his report, offered in evidence by complainant), and such being the case it is urged that it was error for the court to make the city pay over any more money out of the taxes of 1874, the city having already paid over all that she owes on that year. Such being the case, the amount of $10,816.59 and $209.50, proportion of interest on school taxes for 1873, and the proper proportion of principal for school taxes for 1874 (to ascertain the amount of which a re-reference to the master is necessary), are not due to the school board. While it is true that all back taxes prior to 1879 are lumped into one fund, we urge that in calling for an accounting it is sufficient for the city to show, in order to be discharged as far as the taxes of any particular year are concerned, that she has paid over the full amount of taxes due the school board for that year, and having done this, with the taxes for 1874, it is error for the court to order her to turn over any more of the taxes for that year.

IV.

Complainant's judgment No. 12060, and her other judgments are law judgments, and she has ample remedy in law; hence, no right to invoke the equity side of the court.

V.

Complainant had no right to sue the city of New Orleans because her judgments are against the school board only, and she does not allege that the city owes the school board anything.

VI.

The evidence shows that in suit No. 12060 the city was garnisheed on July 12th, 1894, under a *fi. fa.*, and answered under oath that she had one thousand eight hundred and ninety-three 9/100 dollars to the credit of the school fund prior to 1879 on that date, and having paid that amount over to Mrs. Fisher under her judgment, it was error for the court not to hold that said payment to and acceptance by Mrs. Fisher, complainant herein, estopped her from traversing said garnishment, as she is doing by this proceeding, and the court should have held such payment and acceptance as an estoppel and *res judicata* concerning all collections made up to July 12, 1894.

VII.

The court erred in approving the finding of the master
151 that the interest or penalty on delinquent taxes formed a part of the taxes and should be turned over to the board. But even though this was correct (which course is not admitted) we hold that the court erred in ordering the city to pay over the penalty on the taxes which she had already paid over. In any event she

should not be compelled to pay over the penalty on any taxes, except on those taxes which are still in her possession. In other words, the master's report shows twenty-three thousand one hundred and eight 3/100 dollars of principal, and we submit that only the penalties on this twenty-three thousand one hundred and eight 3/100 dollars should be turned over and not the penalties on the taxes that were turned over to the board years ago.

VIII.

It was error for the court to have stricken from the records the two documents filed June 29th and July 1st, 1897, for the reason that they remained on the files from June to December without any objection on the part of the complainant, and it was too late then for her to make the objection she did on December 20th, 1897. The most that should have been required of defendants was to amend the plea to the jurisdiction by affixing the solicitor's certificate.

IX.

It was error for the court to refuse to allow defendants to file affidavit and plea to the jurisdiction, *ratione personæ*, December 20th, 1897, for the reason, that under the law, such a plea can be filed at any time; furthermore, as the city's plea and affidavit set up a charge of fraud against the complainant, in equity, such charge having been made, supported by affidavit, it was the duty of the court to entertain the plea, to let the fraud be proven.

X.

It was error for the court not to have allowed the plea of prescription made in the answers of defendants, for as the complainant's cause of action arose in 1873 and subsequent years, the last year being 1879, the same was prescribed by the prescription of ten years and consequently her suit would have been dismissed on the consideration of this plea.

XI.

Her judgment No. 12060 is based upon choses in action, and not sueable in this court and there is no allegation that the original assignors could sue in this court: therefore the court has no
152 jurisdiction *ratione materiæ*, and it was error for the court to assume jurisdiction herein.

XII.

The court erred in holding that the school taxes out of which said judgments have been made payable is a trust fund levied by the city of New Orleans for the purpose of paying the expenses of the public schools of said city.

XIII.

The court erred in holding that there was any privity between the City of New Orleans and Mrs. Fisher, and in holding that she

has any right to claim an accounting from the City of New Orleans. Defendant city avers and declares that the only person who could call for such accounting is the said school board, the codefendant herein, and the court erred in permitting any other person than the school board to call for such accounting.

XIV.

It was error to order the whole fund ascertained by the master to be paid over to complainant, and interveners in this suit, because if said fund is a trust fund, it is held for the benefit of all interested in said fund, and the only part that should be paid to complainant and interveners is their proportion of same; in other words, it was error for the court to ignore the rights of other certificate-holders not party to this suit, and who were not notified by publication, or cited herein. And to ascertain what proportion of the fund should go to the complainant and interveners herein, a re-reference to the master is necessary.

Wherefore, for the errors assigned and others manifest in the record, said appellant prays that said decree may be reversed and remanded to said circuit court, with instructions to overrule the same and to decree accordingly.

(Signed) SAM'L L. GILMORE,
City Attorney,

(Signed) JAMES J. McLOUGHLIN,
Assistant City Attorney,
Solicitors for Defendants.

153 *Motion and Order for Appeal.*

Entered and filed June 24, 1898.

U. S. Circuit Court, Eastern District of Louisiana.

MRS. M. M. FISHER
vs.
CITY OF NEW ORLEANS ET AL. } No. 12516.

In Equity.

To the honorable the judges of the United States circuit court for the fifth circuit and eastern district of Louisiana:

On motion of Sam'l L. Gilmore and James J. McLoughlin, solicitors for The City of New Orleans, one of the defendants, made in open court, suggesting that the said defendant is aggrieved by the final decree herein made on February 21, 1898, and amended at this term on April 28, 1898, and believes that there is error to her prejudice in the said final decree and desires to appeal therefrom and had filed an assignment of errors,

It is ordered that the defendant City of New Orleans, be granted an appeal from such decree to the United States circuit court of appeals for the fifth circuit, returnable within thirty days on giving

bond in the sum of five hundred dollars, with surety and conditioned as the law directs.

New Orleans, La., June 24, 1898.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Know all men by these presents, that we, The City of New Orleans, a municipal corporation, represented by and acting through Walter C. Flower, mayor, as principal, and George B. Penrose, of this city, as surety, are held and firmly bound unto Mrs. M. M. Fisher's heirs, administrators, executors and assigns, John Fisher, the minors, John Blackadder Fisher, James M. Fisher, William Gardner Fisher and Robert Blackadder Fisher, their father and tutor, John Fisher, John Blackadder, their *procpein ami*, F. J. Gasquet, Joseph Venta and his assigns or transferees, U. Koen & Co., and the members thereof, Mary Quinlan, and her husband, Jean Pomes, Georgiana T. Young, Lizzie G. Wheelwright, Mary A. Sullivan, Mary O'Donnell, Mrs. Mary Fortier, Mrs. A. B. Gage, Wm. E. F. Duclaux and U. Koen, in the full and just sum of five hundred dollars, to be paid to the said Mrs. M. M. Fisher and the other
154 above-named appellees and obligees, their certain attorney, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24 day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas, lately at a circuit court of the United States for the eastern district of Louisiana, docket number 12516, in a suit depending in said court between the appellees and obligees above named, as complainants and interveners, and The City of New Orleans, *et al.*, as defendant- and appellant-, a decree was rendered against the said City of New Orleans, defendant and appellant, and the said City of New Orleans having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said appellees and obligees, complainants and interveners, citing and admonishing them to be and appear before the United States court of appeals for the fifth circuit, to be holden at New Orleans, Louisiana, within 30 days from the date hereof.

Now, the condition of the above obligation is such that if the said City of New Orleans shall prosecute said appeal to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) W. C. FLOWER, *Mayor.* [SEAL.]
GEO. B. PENROSE. [SEAL.]

Sealed and delivered in presence of—
JAMES J. McLOUGHLIN.

Approved by—
(Signed) CHARLES PARLANGE,
U. S. Judge.

THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to succession of Mrs. M. M. Fisher, through John Fisher, adm'r; John Fisher, tutor of the minors, John Blackadder Fisher, James M. Fisher, William Gardner Fisher, and Robert Blackadder Fisher; John Fisher, John Blackadder, F. J. Gasquet, Joseph Venta, U. Koen & Co., assigns of Venta; U. Koen, Mary Quinlan, Jean Pomes, Georgiana V. Young, now the wife of Dr. P. J. Friedrichs; Lizzie G. Wheel-
155 right, Mary A. Sullivan, Mary O'Donnell, Mrs. Mary Fortier, Mrs. A. B. Gage, and Wm. E. F. Duclaux, Greeting:

You are hereby cited and admonished to be and appear at a circuit court of appeals of the United States, for the fifth circuit, to be holden at the city of New Orleans, within 30 days from date hereof, pursuant to a motion and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The City of New Orleans is appellant, and you are appellees, No. 12516 of the docket thereof, to show cause, if any there be, why the judgment rendered against the said City of New Orleans, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 29th day of June, in the year of our Lord one thousand eight hundred and ninety-eight.

CHARLES PARLANGE, *Judge.*

Received by U. S. marshal, New Orleans, La., June 29th, '98, and on the 22nd day of July, 1898, personally appeared before the undersigned, H. J. Carter, U. S. commissioner for the eastern district of Louisiana, John Early, deputy U. S. marshal of the eastern district of Louisiana, who upon oath says that on the 30th June, 1898, he served the within citation on the succession of Mrs. M. M. Fisher, through John Fisher administrator, John Fisher tutor of the minors John Blackadder Fisher, James M. Fisher, William Gardner Fisher, and Robert Blackadder Fisher, John Fisher, John Blackadder, F. J. Gasquet, Joseph Venta, U. Koen & Co. assignee of Venta, U. Koen, Mary Quinlan, Jean Pomes, Georgiana V. Young, now the wife of Dr. P. J. Fredericks, Lizzie G. Wheelright, Mary A. Sullivan, Mary O'Donnell, Mrs. Mary Fortier, Mrs. A. B. Gage and Widow E. F. Duclaux, by delivering a true copy thereof to each of their respective attorneys of record, in person, Dinkelspeil & Hart, Charles Louque, E. Howard McCaleb, Charles J. Theard, in the city of New Orleans, La.

JOHN EARLY,
Deputy U. S. Marshal.

Sworn to and subscribed before me this 22nd of July, 1898.

H. J. CARTER,
U. S. Commissioner.

(Indorsement:) Return. United States circuit court, eastern district of Louisiana. No. 12516. Mrs. M. M. Fisher *et als. vs.*
156 The City of New Orleans. Citation. Marshal's return. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed July 22, 1898. E. R. Hunt, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 193 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Mrs. M. M. Fisher *vs.* The City of New Orleans *et al.*, No. 12516 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 22 day of July, A. D. 1898.

[SEAL.] E. R. HUNT, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court. That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 22 day of July, A. D. 1898.

CHARLES PARLANGE, *Judge.*

157 *Transcript on Cross-appeal.*

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

JOHN FISHER, TUTOR, ET ALS. *versus* CITY OF NEW ORLEANS. } No. 12516. In Equity.

Petition for cross-appeal. Filed November 10, 1898.

To the hon. the circuit court of the U. S. for the eastern dist of La.:

The petition of John Fisher, herein acting as the duly qualified natural tutor of his minor children, herein joined by F. J. Gasquet, Jos. Venta and his transferee, U. Koen, Mary Quinlan, Jean Pomes, G. T. Young, L. G. Wheelright, M. A. Sullivan, Mary O'Donnell, Mrs. Mary Fortier, Mrs. A. B. Gage, E. F. Duclaux and U. Koen, respectfully represents:

That an appeal, not to act as a supersedeas, has been taken from

the decree herein, by the City of New Orleans, returnable to the hon. the circuit court of appeals of the U. S. for this district.

That your petitioners, who are all appellees therein, aver that they are advised that they are aggrieved by the order dated April 28th, 1898, herein rendered, amending the said decree, so as to reduce the interest allowed by the decree, and they desire to submit the question to the appellate court.

Wherefore, petitioners pray that a cross-appeal be granted to them from the order of April 28th, 1898, amending the decree herein, returnable to the hon. the circuit court of appeals of the United States, for the fifth circuit, at the city of New Orleans, within thirty days, on petitioner- giving bond conditioned as the law directs, and petitioners pray for general relief, etc.

(Signed) CHS. LOUQUE, *Solicitor.*
(Signed) E. H. McCALEB,
For U. Koen & Mrs. Gage.

158 *Assignment of Errors.*

Appellants John Fisher, natural tutor & *als.*, now assign as error:

1°. That a new trial having been refused after the term during which decree was rendered the circuit court was without jurisdiction, under the equity rule No. 88 to amend its decree; and the other equity rules governing the practice of the court.

2°. That under the law and equity jurisprudence as well as under the Louisiana law, complainant and interveners were entitled to a decree carrying interest, as was allowed by the original decree.

Wherefore, appellants pray that the order of April 28th, 1898, amending the decree be cancelled and annulled; and they pray for general relief, &c.

(Signed) CHS. LOUQUE.
E. H. McCALEB, *Solicitor.*

Order.

Let, as within prayed for, an appeal, not to act as a supersedeas, be granted to petitioners on their giving bond conditioned as the law directs in the sum of two hundred dollars, returnable to the hon. the circuit court of appeals sitting in New Orleans, for the fifth circuit, and let citations issue according to law.

New Orleans, Nov. 10, '98.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Bond.

Filed November 10, 1898.

Know all men by these presents, that we, John Fisher, natural tutor of his minor children, F. J. Gasquet, Jose Centa and transferee, U. Koen, Mary Quinlan, Jean Pomes, G. T. Young, L. G. Wheelright, M. A. Sullivan, Mary O'Donnell, Mrs. Mary Fortier,

Mrs. A. B. Gage, E. T. Duclaux and U. Koen, as principal-, and —— ——, F. J. Quinlan, —— ——, as sureties, are held and firmly bound unto The City of New Orleans in the full and just sum of two hundred dollars to be paid to the said City of New Orleans, certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 8 day of November in the year of our Lord one thousand eight hundred and ninety-eight.

159 Whereas lately, at a session of the United States circuit court for the eastern district of Louisiana, in a suit depending in said court, between John Fisher, natural tutor of his minor children, F. J. Gasquet, Jose Venta and his transferee, U. Koen, Mary Quinlan, Jean Pomes, G. T. Young, L. G. Wheelright, M. A. Sullivan, Mary O'Donnel, Mrs. Mary Fortier and Mrs. A. B. Gage, E. T. Duclaux and U. Koen, compl'ts and interveners and The City of New Orleans, defendant, No. 12516, an order was rendered against the said John Fisher, tutor, *et als.*, on April 28, 1898, and the said John Fisher, natural tutor, Jose Venta, U. Koen, F. J. Gasquet, Mary Quinlan, Jean Pomes, G. T. Young, L. G. Wheelright, M. A. Sullivan, Mary O'Donnell, Mrs. Mary Fortier, Mrs. A. B. Gage, E. T. Duclaux and U. Koen, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the order in the aforesaid suit, and a citation directed to the said City of New Orleans, citing and admonishing it to be and appear before the United States court of appeals for the fifth circuit, to be holden at New Orleans, Louisiana, within thirty days from the date thereof:

Now, the condition of the above obligation is such, that if the said John Fisher, tutor, Jose Venta, F. J. Gasquet, U. Koen, transferee, Mary Quinlan, Jean Pomes, G. T. Young, L. G. Wheelwright, M. A. Sullivan, Mary O'Donnell, Mrs. Mary Fortier, Mrs. A. B. Gage, E. T. Duclaux and U. Koen, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) CHS. LOUQUE, [SEAL.]
Att'y for Appellants.

(Signed) F. J. QUINLAN. [SEAL.]

Approved November 10th, 1898.

(Signed) CHARLES PARLANGE,
U. S. Judge.

(Indorsed:) No. 12516. John Fisher, tutor, *et als. vs.* City of New Orleans. Bond.

160 THE UNITED STATES OF AMERICA:

Circuit Court of Appeals of the United States, Fifth Judicial Circuit.

The President of the United States to the City of New Orleans, through W. C. Flower, mayor, Greeting:

You are hereby cited and admonished to be and appear at the circuit court of appeals of the United States to be holden at the city of New Orleans, within 30 days from date hereof, pursuant to a petition of appeals filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein the plaintiff is John Fisher, tutor, &c., and the defendant, The City of New Orleans, No. 12516, and there to show cause, if any there be, why the judgment rendered against the said appellant, etc., as in said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 10th day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

CHARLES PARLANGE, *Judge.*

Marshal's Return.

Received by U. S. marshal, New Orleans, La. Nov. 10, '98.

On this 11th day of November, 1898, before the undersigned authority, personally appeared Felix Bienvenue, deputy United States marshal for the eastern district of Louisiana, personally known to me as such, who being duly sworn deposes and says that he served this writ on the City of New Orleans, Louisiana, by handing the same to Hon. Walter C. Flower, mayor of said city in person, at his office in said city, on the 11th day of November, 1898.

FELIX BIENVENUE,
Dep'y U. S. Marshal.

Sworn to and subscribed before me on this 11th day of November, 1898.

[SEAL.] H. J. CARTER,
U. S. Commissioner.

(Indorsement:) United States circuit court, eastern district of Louisiana. No. 12516. John Fisher, tutor, *et als. vs.* The City of New Orleans. Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Nov. 11, 1898. E. R. Hunt, clerk.

161 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing six pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, on cross-appeal of complainants and interveners in the case of John Fisher, tutor, *et als. vs.* City of New Orleans, No. 12516 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 12 day of November, A. D. 1898.

E. R. HUNT, *Clerk.*

[SEAL.]

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify, that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court. That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district this 12 day of November, A. D. 1898.

CHARLES PARLANGE, *Judge.*

162 (*Original Bond.*)

Know all men by these presents that we, John Fisher, natural tutor of his minor children, F. J. Gasquet, Jose Venta and transferee U. Koen, Mary Quinlan, Jean Pomes, G. T. Young, L. G. Wheelwright, M. A. Sullivan, Mary O'Donnell, Mrs. Mary Fortier, Mrs. A. B. Gage, E. T. Duclaux, and U. Koen, as principal, and F. J. Quinlan, as surety, are held and firmly bound unto the City of New Orleans in the full and just sum of two hundred dollars, to be paid to the said City of New Orleans, certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 8 day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a session of the United States circuit court for the eastern district of Louisiana, in a suit depending in said court, between John Fisher, natural tutor of his minor children, F. J. Gasquet, Jose Venta and his transferee U. Koen, Mary Quinlan, Jean Pomes, G. T. Young, L. G. Wheelwright, M. A. Sullivan, Mary O'Donnell, Mrs. Mary Fortier and Mrs. A. B. Gage, E. T. Duclaux and U. Koen, comp'l'ts and interveners, and The City of New Orleans, defendants, No. 12516, an order was rendered against

the said John Fisher, tutor, *et als.*, on April 28, 1898, and the said John Fisher, natural tutor, Jose Venta, U. Koen, F. J. Gasquet, Mary Quinlan, Jean Pomes, G. T. Young, L. G. Wheelwright, M. A. Sullivan, Mary O'Donnell, Mrs. Mary Fortier, Mrs. A. B. Gage, E. T. Duclaux and U. Koen, having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the order in the aforesaid suit, and a citation directed to the said City of New Orleans, citing and admonishing it to be and appear before the United States court of appeals for the fifth circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said John Fisher, tutor, Jose Venta, F. J. Gasquet, U. Koen, transferee, Mary Quinlan, Jean Pomes, G. T. Young, L. G. Wheelwright, M. A. Sullivan, Mary O'Donnell, Mrs. Mary Fortier, Mrs. A. B. Gage, E. T. Duclaux and U. Koen, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CHS. LOUQUE, [SEAL.]
Attorney for Appellants.
F. J. QUINLAN. [SEAL.]

163 Approved November 10th, 1898.
CHARLES PARLANGE,
U. S. Judge.

(Indorsed:) No. 12516. John Fisher, tutor, *et als. vs.* City of New Orleans. Bond. No. —. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Nov. 10, 1898. E. R. Hunt, clerk.

164 *Argument and Submission.*

November Term, 1898.

DECEMBER 12, 1898.

(Extract from Minutes.)

THE CITY OF NEW ORLEANS
vs.
JOHN FISHER, Tutor, etc., ET ALS. } No. 747.

This cause was regularly called this day, and was submitted to the court after argument by Mr. Branch K. Miller, and Mr. J. J. McLaughlin for the City of New Orleans, and by Mr. Charles Louque and Mr. E. Howard McCaleb for John Fisher.

Decree.

November Term, 1898.

TUESDAY, *January* 17, 1899.

(Extract from Minutes.)

THE CITY OF NEW ORLEANS
vs.
JOHN FISHER, Tutor, etc., ET ALS. } No. 747.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the eastern district of Louisiana, and was argued by counsel.

On consideration whereof: It is now here ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be, and the same is hereby amended so as to allow 5 % interest on the sum of $71,131.60, from January 24, 1881, and on the sum of $799.18, from May 8, 1897, and as so amended the said decree is affirmed.

It is further ordered, adjudged and decreed, that the appellant, The City of New Orleans, and the surety on the appeal bond herein, George B. Penrose, be condemned *in solido* to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

165 [Stamped:] U. S. circuit court of appeals. Filed Feb. 6, 1899. J. M. McKee.

United States Circuit Court of Appeals, Fifth Circuit.

CITY OF NEW ORLEANS ET AL., Plaintiffs in Error, Appellants,
versus
JOHN FISHER, Tutor, ET ALS., Defendants in Error, Appellees. } No. 747.

To the honorable judges of the United States circuit court of appeals for the fifth circuit:

The petition of The City of New Orleans (herein represented by Walter C. Flower, mayor), plaintiff in error herein, and of The Board of School Directors for the Parish of Orleans (herein represented by Ernest B. Kruttschnitt, its president), also plaintiff in error herein, respectfully shows that petitioners believe there is error to their prejudice in the decree of this honorable court herein, and they desire to, and do hereby, apply to and petition this honorable court to grant them a rehearing herein, for the purpose of correcting the errors, mistakes and inadvertences in said decree; and defendants say that said decree is erroneous and to their prejudice, because:

That since their appeal was filed in this cause, and before the

cross-appeal was taken by the defendants in error herein,
166 the said defendants in error brought a proceeding in the circuit court of the United States of the fifth circuit and eastern district of Louisiana, entitled United States *ex rel.* John Fisher, tutor, etc., *vs.* Board of Liquidation, No. 12740, of the docket of said circuit court, wherein said Fisher *et als.* admitted, under oath, that the judgment obtained in this proceeding, No. 12516 of the docket of said court, for $71,938.74, with legal interest from February 21, 1898, was final, and they ask said court, in said proceeding No. 12740, to grant them a mandamus, directed against The Board of Liquidation, for payment of this judgment.

Your petitioners represent that this is newly discovered evidence arising since the appeal herein was taken to this honorable court, and that the whole record of the said suit No. 12740 is now lodged in this honorable court of appeals as No. 746 of the docket thereof, and your petitioners pray leave to have the same filed herein, and considered in connection with and as a part of this petition for rehearing.

Now your petitioners show that said suit No. 12470 and said prayer for mandamus constitute a full and final acquiescence in the judgment and decree rendered in the instant case No. 747 of this court and No. 12516 of the United States circuit court; and that by their action in taking said proceeding, said defendants in error are estopped and precluded from asking any amendment of said judgment which might increase the amount of the same.

Petitioners further show that the court erred in refusing to take notice of the fact which is apparent on the face of the record, to wit: that Mrs. M. M. Fisher is not a subject of Spain, but on the contrary is a citizen of Louisiana.

Petitioners show that the judgment in this case is solely in
167 favor of Mrs. M. M. Fisher, and that her death certificate, which is found on page 129 of the transcript, shows that she was a native of Virginia, and had lived in New Orleans for thirty-eight years prior to her death. And your petitioners show that the affidavit of solicitor for Mrs. Fisher, which is found on page 141 of the transcript, sets forth as a fact that the statement that she and her husband are Spanish subjects, was wrong, and that on the contrary he is a British subject, and had never been a Spaniard. And this statement relative to John Fisher is corroborated by his own affidavit printed on page 142 of the transcript. Consequently, petitioners believe that it was error for the court not to have taken notice of these facts, which are apparent on the face of the record, and also of the fact that these statements were made after the decree had been rendered by the court below, and no opportunity was given petitioners to traverse the same.

Your petitioners further claim and show, that there was error on the part of this court in refusing to go behind the judgment originally obtained by Mrs. M. M. Fisher in suit 12060 (page 60 of the transcript), in order to ascertain the fact as to whether or not the record of that case showed that Mrs. M. M. Fisher was entitled, under her pleadings, to avail herself of the jurisdiction of the United

States circuit court, and in support of which contention petitioners again cite the case of Wisconsin *vs.* Pelican Insurance Company, 127 U. S., 292, and New Orleans *vs.* Benjamin, 153 U. S., 411.

Petitioners also claim that there is error in the opinion and decree of this honorable court in its reasoning upon the sixth assignment of error, to wit: "That in the view of the court the garnishment proceedings shown in the record were against the treasurer of the city of New Orleans as *ex officio* treasurer of the school board," whereas in point of fact the record shows that there were two separate garnishments or *fi. fa.* proceedings taken; one on page 120 of
168 the transcript shows: that the marshal collected $312.56 from Charles H. Schenck, treasurer of the city of New Orleans, and the other on pages 121 and 122 of the transcript in answer to the garnishment shows that Charles H. Schenck, treasurer of the city of New Orleans and *ex officio* treasurer of the board of school directors, had in his hands $1,893.09, which was duly paid over to Mrs. Fisher.

And your petitioners show that these two separate answers and returns show that Mr. Schenck was garnisheed in two different capacities. First, as treasurer of the city of New Orleans, and, second, as treasurer of the school board. Consequently, under the law the return under the garnishment as treasurer of the city of New Orleans should be held as constituting an accounting up to that date between the plaintiff in this proceeding, the school board and the city of New Orleans.

Your petitioners further believe that there is error of the court in its statement relative to the ninth assignment of error, which reads as follows: "The ninth assignment of error does not appear to be based on any affirmative ruling of the court below. It appears that leave was asked to file a plea to the jurisdiction and an order to show cause issued, but no ruling made in the premises."

Your petitioners, in support of this contention, respectfully refer your honors to the plea itself, which is found on page 49 of the transcript, and to the order and ruling of the court relative to the same, which are found on page 51 of the transcript, and which read as follows:

169 "Extract from the Minutes.

November Term, 1897.

NEW ORLEANS, MONDAY, *December* 20, 1897.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, district judge.

MRS. M. M. FISHER
versus
CITY OF NEW ORLEANS. } No. 12516.

This day, in open court, J. J. McLoughlin, assistant city attorney, of counsel for defendant, presented a plea to the jurisdiction and a motion to file same.

Whereupon counsel for complainant and intervenors objected to the filing of the same on the grounds urged by them. After hearing the counsel for both parties the court refused the application to file said plea at this time."

And it is this ruling of the court below which petitioners respectfully say was an error of that court, and we ask your honors' review of the same.

The law makes it the duty of the court at any time that it becomes apparent that a fraud has been perpetrated upon the court, and jurisdiction has been acquired by fraud, to stop the proceedings and investigate the question of jurisdiction. In support of which contention we refer your honors to the fact that the plea of fraud and want of jurisdiction was raised by your petitioners, as appears from the plea found on page 49 of the transcript, and the judge below was wrong in the order which he made when same was presented to and argued before him, and which order is found on page 51 of the transcript, as aforesaid, refusing leave to file same.

Under this state of facts we claim that the court should
170. be guided by the principle laid down by the Supreme Court in Grace *vs.* Insurance Company, 109 U. S., 278, and thereunder remand this cause to the circuit court with orders to consider and try this sworn plea of fraud and lack of jurisdiction.

Petitioners believe the court erred in holding in its reasons for overruling the seventh assignment of errors that the city is liable for interest collected on back school taxes. We respectfully submit that there is no authority cited by the defendants in error or by the court in support of the contention that the interest is a part of the taxes, and on the contrary authorities were cited in our brief, all holding that penalties form no part of the tax, and we respectfully urge upon the court to reconsider this question, as we believe a consideration of the fact that we have cited numerous authorities in support of our contention, and our opponents have not cited a single decision in their favor, should be construed as a recognition of our position.

We also respectfully submit that there is error in the court's conclusion that sec. 3015 of the Civil Code applies to the city of New Orleans.

The city was not a voluntary trustee in this matter; the collection of this money was forced upon her, and she had to collect it entirely at her own expense. Besides, the city charter of 1882 set aside all money collected from interest on delinquent city taxes as sacred to the public improvement fund, and the city has already expended that money on public improvements, as ordered by the act 20 of 1882, sec. 65, and it is wrong for the court to require her now, after she has expended it for that purpose under the mandate of the law to turn it over to creditors of the school board nearly twenty years after its collection and disbursement.

Wherefore, petitioners, plaintiffs in error, pray that this
171 petition for a rehearing be filed and considered, and that notice thereof be given to all parties in interest. And that,

after due consideration and hearing, this petition be granted and a rehearing had, and that the decree hereinbefore rendered be modified or set aside, so as to grant to petitioners the relief prayed for.

And your petitioners further pray that in any event so much of your decree as increases the amount of said judgment as originally fixed by the decree of the lower court be set aside, and that the cross-appeal of said defendants in error be dismissed upon consideration of the transcript and proceedings No. 746 of the docket of this honorable court, which your petitioners plead as *res adjudicata* to the demands of said cross-appeal.

And petitioners pray for such orders, rulings, process and decrees herein as may do justice and equity to and between all parties herein involved.

And petitioners pray for all special, equitable and general relief.

JAMES J. McLOUGHLIN,
Assistant City Attorney,
SAM'L L. GILMORE,
City Attorney,
Solicitors for Plaintiffs in Error.

I, the undersigned solicitor for the City of New Orleans and Board of School Directors for the Parish of Orleans, hereby certify that in my opinion the foregoing petition and the reasons given therein as grounds for a rehearing are good in law.

JAMES J. McLOUGHLIN, *Solicitor.*

New Orleans, February 4, 1899.

172 *Rehearing Denied.*

November Term, 1898, February 21, 1899.

(Extract from Minutes.)

THE CITY OF NEW ORLEANS
vs.
JOHN FISHER, Tutor, ET ALS. } No. 747.

Ordered, that the petition for rehearing filed in this cause be and the same is hereby denied.

Opinion.

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1898.

CITY OF NEW ORLEANS, Appellant,
vs.
JOHN FISHER, Tutor, ET ALS., Appellees. } No. 747.

Appeal from the circuit court of the United States, eastern district of Louisiana.

Before Pardee and McCormick, circuit judges, and Boarman, district judge.

This suit was commenced by a bill brought by Mrs. M. M. Fisher, joined and authorized by her husband, John Fisher, of Cuba, and citizens of the Kingdom of Spain, against the City of New Orleans; and in said bill it was alleged that she recovered a judgment in this hon. court against the Board of School Directors, a corporation created by the laws of the State of Louisiana and a citizen thereof, in the sum of more than ten thousand dollars, as more fully appears by the record of said suit. "That your oratrix obtained two other judgments against the same school board before the civil district court for the parish of Orleans, amounting in the aggregate to many thousand dollars.

That all of said judgments are now final, that they are made payable out of the school taxes levied by the City of New Orleans prior to 1879.

Your oratrix avers that the school taxes out of which said judgments have been made payable is a trust fund levied by the City of New Orleans for the purpose of paying the expenses of the public schools of the City of New Orleans.

173 1st. That the City of New Orleans has failed to collect the said taxes punctually and that it was through her fault and negligence that the same remains uncollected, and by reason of her neglect she has become liable for the amount of taxes yet remaining uncollected.

2d. Your oratrix further complains and says that said taxes, under the law, carried interest at the rate of ten per cent. per annum, and that the City of New Orleans has never paid to the school board any of the interest due on said taxes, but she has misapplied and diverted the same to other unlawful uses.

3d. Your oratrix further avers that the school board created the obligation against said school taxes, by virtue of contracts which were legally entered into and your oratrix was protected by the Constitution of the United States from any impairment of her contract.

That in violation of this constitutional right, the State of Louisiana passed act 82 of 1884, which directed that the property of the delinquent tax-payers should be sold for what it would bring and that all taxes due thereon should by virtue of said sale be canceled.

That by reason of said law, the City of New Orleans allowed the property on which the school taxes were due to be sold for State taxes, and she caused the city taxes, including the school taxes, to be canceled; that she was thus guilty: 1st. As a delinquent trustee for not having enforced the collection of the said tax; and 2d. For having failed to protect the interest of your oratrix in said State tax sale; that the cancellations thus made amount to many thousands of dollars.

4th. That the said City of New Orleans at various times passed ordinances cancelling and annulling the said taxes and remitting the interest thereon.

That your oratrix is unable to give the exact amount of each kind of violations of her obligations by the trustee, and it is absolutely necessary to make the City of New Orleans account for the various amounts which have been lost to your oratrix through the unfaithfulness of said trustee.

That the Board of School Directors, to whom the City of New Orleans should account, have refused to demand such an
174 account, and will continue so to do, and your oratrix would be left without a remedy.

That the fund which the City of New Orleans administers seems now to be insufficient to satisfy the demands of all the creditors who are entitled to be paid out of the same.

Your oratrix further avers that her judgments are made directly payable out of the school taxes levied prior to 1879, and she has an equitable lien there against — enforceable before a court of equity.

She further avers that under the law, her certificates, which are merged in her judgments, have been, under the law, received by the City of New Orleans directly, in payment of the school taxes, without the intervention of the Board of School Directors.

That for those reasons your oratrix brings her bill against the City of New Orleans and the Board of Directors of the City Schools of New Orleans for an account.

Your oratrix brings this bill for herself and all parties similarly situated who are willing to appear and contribute to the costs thereof, they being too numerous to be made parties hereto.

May it please your honors to grant unto your oratrix a writ of subpœna to be directed to the City of New Orleans, through its mayor, and to the School Board of the City Schools of New Orleans, E. B. Kruttschnitt, thereby commanding them and each of them, on the first Monday in June, 1896, under the penalties therein, to be limited, personally to appear before this hon. court, then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, abide, perform such further orders, direction and decree that this hon. court may make, and to give a full, fair and perfect account of all the school taxes collected by the City of New Orleans for the years 1873, 1874, 1875, 1876, 1877 and 1878; of all the interest received thereon by said city and never accounted for, of all the taxes which were not collected for want of proper enforcement, and which have since been canceled, both sales made by the State tax collectors and by ordinance

adopted by the city council; and your oratrix further prays for all general and particular relief as shall seem agreeable to equity and good conscience."

175 On June 1, 1896, the City of New Orleans, through its city attorney entered its appearance. Afterwards, on August 24, 1896, a so-called supplemental bill was filed, wherein it was alleged:

"Your oratrix avers that the City of New Orleans has at various times seized for the taxes due, for the years during which her claim arose, a number of houses and lots, and has purchased the same in satisfaction of the taxes due, and that a resulting trust has, under the law, followed the said property, and your oratrix is entitled to have the value of said real estate realized upon and the rents accounted for by the City of New Orleans.

Your oratrix is unable to give an exact statement of the houses and properties so purchased by the City of New Orleans, but she avers that the same largely exceeds thirty thousand dollars; that said city allows said property to go to waste and your oratrix avers that she has a statutory lien on all of said property under the laws of the United States, and that she is entitled to the appointment of receiver to take charge of same and realize under order of court.

That the acts complained of are contrary to equity and your oratrix has no rights save before the equitable jurisdiction of this hon. court.

Your oratrix brings this, her bill, for her own benefit and for all other persons in her same situation.

May it please your honors to grant unto your oratrix a receiver to take charge of the property purchased by the City of New Orleans for the taxes 1874 to 1879, inclusive, with such powers as receivers generally possess and more especially to be mentioned in the order appointing him, and your oratrix further prays that this supplemental bill be filed and that the City of New Orleans, through the mayor thereof, be ordered to show cause on such day as this hon. court may fix, why the prayer herein for receiver should not be granted and your oratrix prays for general relief."

General demurrers were filed to the original and amended bills which were afterwards overruled. On March 12, 1897, the City of New Orleans filed answer, substantially, as follows:

176 I.

"Defendant admits that oratrix recovered judgments against the Board of School Directors, a corporation of the State of Louisiana, and a citizen thereof, both in this honorable court and in the civil district court for the parish of Orleans, as is set forth in oratrix's bill of complaint and records annexed thereto and referred to therein.

II.

Defendant admits that all of said judgments are now final and are payable as decreed and provided for in the said judgments.

III.

Defendant denies that the school taxes out of which said judgments have been made payable is a trust fund levied by the City of New Orleans for the purpose of paying the expenses of the public schools of said city.

IV.

Defendant denies that it has ever failed to collect said taxes punctually, and denies that any of the same remain uncollected, and denies that if any of the same remain uncollected, they so remain by reason of any negligence on the part of this defendant, and denies that defendant is liable at all for the amount of any such taxes yet remaining uncollected, if any such there be.

V.

Defendant admits that the City of New Orleans has never paid to the school board any interest which she may have collected on any back taxes, and defendant denies that any such interest, if same has ever been collected, was due to the school board, and defendant denies that she has ever misapplied or diverted to unlawful uses any interest that she may have collected from delinquent tax-payers or back taxes, and defendant avers and shows that by express provision of law all interest which she may collect on any back taxes is especially set aside for certain purposes and cannot by her be used for school purposes or for any other purpose than that commanded by law.

VI.

177 Defendant denies that the school board created the obligation against the school taxes set forth in oratrix's bill of complaint by virtue of any contracts legally entered into, and denies that the oratrix has any right to invoke the protection of the Constitution of the United States herein, and denies that the provisions of the same regarding impairment of contracts have been in any manner violated by this defendant.

VII.

Defendant denies that act No. 82 of 1884 was passed in violation of any constitutional rights *on* oratrix in the premises, and defendant declares that whatever was done by the State of Louisiana in passing the said act, if it was done, was within the legislative authority, and the said taxes and legislative provisions were subject to change, amendment and repeal by the same authority which created them, and defendant shows and avers that the City of New Orleans had no authority or control over the action of the legislature in the premises.

VIII.

Defendant denies that the City of New Orleans allowed any property on which school taxes were due, to be sold for said taxes, and denies that she caused the city taxes, including the school taxes, to be canceled.

IX.

Defendant denies that she has been or is guilty as a delinquent trustee for not having enforced the collection of said taxes, denies that she ever was a trustee in the matter, denies that she ever failed to enforce the collection of any taxes which it was her duty to enforce, denies that it ever was her duty to protect the interests, if any she had, of oratrix, at said tax sales, denies that oratrix had any such interest, and denies that there were any such tax sales.

X.

Defendant denies that any cancellations amounting to many thousands of dollars, or to any amount, were made by reason of said sales, as set forth in oratrix's bill of complaint.

XI.

178 Defendant denies that the City of New Orleans passed ordinances cancelling and annulling any taxes, or remitting any interest thereon, but if any taxes were so cancelled or remitted, defendant avers the same was done by authority of law or by judgment of a competent court. Defendant denies that there was or is any obligation on the part of the city to account either to the school board or to the oratrix for any taxes, moneys or appropriations such as are set forth in oratrix's bill of complaint.

XII.

Defendant denies that it was the duty of the school board to call this defendant to account, and denies that the school board or the oratrix herein has any cause of action against this defendant for such an account. Defendant denies that there was any privity between the school board and this defendant, or between Mrs. Fisher and this defendant. And further answering, defendant says, that if any such cause of action for an accounting ever did exist in favor of said school board or of said oratrix, the same was effective and executory in the year 1880, and became actionable and exegent in the year 1880, and in the years following the year 1873 up to 1879, inclusive. That said action of accounting was personal to said school board and could only be exercised and availed of by the said school board, which action is prescribed by the lapse of ten years from and after each of the said years, and that oratrix has no right or cause of action in the premises.

XIII.

Defendant denies that there is any fund now administered, or which ever was administered by the city of New Orleans, derived either from appropriations, taxes, or money said to be due said school board, and denies that if there is or was any such fund, that the said school board or oratrix has any rights in the premises.

XIV.

Defendant admits that the judgments of oratrix are payable as stipulated in said judgments, but denies that oratrix has any equitable lien enforceable against the city of New Orleans before a court of equity by reason thereof.

XV.

179 Defendant denies that under the law were the services which she alleges have been merged in her judgments, ever received by the city of New Orleans, directly in payment of the school taxes without the intervention of the board of school directors.

XVI.

Defendant denies that the city of New Orleans has, at various times for the taxes due for the years during which oratrix' claim is alleged to have arisen, sold for taxes and purchased in satisfaction thereof a number of houses and lots, and particularly denies that any school taxes are due and payable on any such property, if any such has been bought, and denies that if any such property has been bought, any resulting trust has, under the law, followed said property, and denies that oratrix would, in any event, be entitled to have the value of said real estate realized upon, or the rents accounted for by the city of New Orleans.

XVI.

Defendant denies that the city of New Orleans purchased houses and properties, as charged in oratrix' supplemental bill of complaint, to the extent of $30,000 or any part thereof.

XVII.

Defendant denies that the city has any property upon which oratrix has any statutory lien under any law of the United States, and denies that she has allowed to go to waste any property of any description which is, or has been in her possession, and denies that oratrix is entitled to have a receiver appointed to take charge of any property owned or held by this defendant.

XVIII.

Defendant denies that any acts which have been done by her are contrary to equity, and defendant denies that the oratrix has any right or reason to invoke the equitable jurisdiction of this honorable court.

Further answering, defendant shows that there does not appear in the bills of complaint of oratrix herein any allegation of any indebtedness by the city of New Orleans to the said school board,

180 and that without having made said allegation oratrix is without right to proceed against this defendant herein.

Further answering, defendant shows and avers that it has been

decreed in the judgments of oratrix herein sued on, and in other suits of a similar nature, by other parties, against the city of New Orleans, that oratrix and such other complainants have no cause of action against the city of New Orleans on account of the claims of the character sued on in the judgments hereinbefore referred to."

Replication having been filed to this answer on March 22, 1897, the court ordered a reference to a master, "to take a full, true, fair and perfect account of all the funds, principal and interest received by the city of New Orleans from the school taxes levied in 1871, 1873, 1874, 1875, 1876, 1877 and 1878, of all interest remitted illegally, of all properties purchased for said taxes, as more fully prayed in the bill and the supplemental bill filed herein and to that effect the parties shall produce before said master all books, papers, documents to be examined and which may be necessary or proper in the premises."

At this stage of the proceeding numerous intervenors, claiming to have judgments against the school board in all respects similar to the judgments of Mrs. Fisher, intervened, asking to share in the proceeds of any amounts found due by the city of New Orleans on the accounting.

May 22, 1897, the master reported as follows:

"1st. The city of New Orleans owes the school board for the principal of school taxes collected and not paid over from the years 1871 to 1878, both inclusive, the amount of $23,180.03.

2d. The proportion of the interest actually collected by the city of New Orleans on the taxes of the years 1871 to 1878, both inclusive, up to January 1st, 1897, to which the school board will be entitled, if it is entitled to the same proportion of the interest as of the principal of said taxes, is $48,758.75.

It is a question of law whether the school board is entitled to any part of the interest. I think it is—the interest as a mere accessory of the principal belongs in my opinion to the same person to whom the principal belongs. Accordingly in my opinion the
181 amount the city of New Orleans now owes to the school board for taxes collected, and for interest on the taxes collected, is as above stated, $71,938.78.

3d. Properties bought in.

The complainant abandoned the attempt to show that the city owed anything on account of properties purchased for taxes.

4th. Interest illegally remitted.

The complainant claims that the city should be further charged with interest on the portion of the taxes accruing to the school-tax fund, whether such interest was actually collected by the city or not. In view of the great length of time that has lapsed, and the almost impossibility of proving now whether the interest was collected or not, and in view of the fact that under the assessment-rolls there always is an uncollectible amount of interest, I do not think that the city ought to be charged with the interest which she is not shown to have collected. No evidence of any kind was adduced before me on this subject. It was not shown that any part of the

uncollectible interest could have been collected or was illegally remitted. I, therefore, find that the city is not chargeable with the calculated amount of interest not collected.

By agreement of the parties, the fees of the experts herein were fixed at two hundred and fifty dollars ($250.00) to each of them, or five hundred dollars ($500.00) to the two. The bill of R. H. Carter, the stenographer, for evidence taken in this case is $21.50.

I further find that the following parties have proved their claims against the fund herein, by judgments rendered in their favor against the school board, in the civil district court for the parish of Orleans, namely:

M. M. Fisher	$11,094.87
" "	8,802.39
" "	5,864.64
" "	57,059.69
F. J. Gasquet	21,297.72"
Jose Venta	

This report was accompanied by two exhibits showing the methods by which the amounts collected by the city and due the school board had been ascertained.

182 March 31, 1897, the complainant with several intervenors filed exceptions to the master's report, as follows:

" First exception. That the master failed to reserve the rights of these plaintiffs and intervenors to the interest money collected by the city of New Orleans for the school fund since January, 1881.

Your exceptors aver that in the bill of complaint herein, it was averred that the city of New Orleans had remitted a large amount of interest to the tax-payers, and an attempt was made to hold the said city liable for said interest which it was averred was illegally remitted.

That on an examination of the accounts your exceptors discovered that the greatest deficit came not from the interest illegally remitted, but from a contract made by the city of New Orleans in 1881 with the civil sheriff, by virtue of which all the interest accrued on the taxes was given and allowed to the sheriff as a part consideration of his services.

That the city of New Orleans had no power or right under the constitution to increase the compensation of any officer, and said contract was *ultra vires* as trustee, and not binding on the *cestui que trust*.

That your exceptors were delayed already so long by litigation in the enforcement of their claim that they preferred that their right to further accounting should be reserved, than to file a supplemental bill with the permission of this honorable court; that, therefore, the rights of your exceptors to a further accounting on that head should have been reserved by the master and should be so now reserved by this hon. court.

Second exception. Your exceptors aver that they found it extremely difficult and a work of great magnitude to arrive at the properties purchased by the city for the taxes, and for the time

being your exceptors were not able to get at the correct description of said properties.

That the officers of New Orleans are busy with the regular duties, and your exceptors did not deem it expedient at the present juncture to enforce their rights to an account of said properties, and their rights should be reserved.

Third exception. That the master failed to allow any in-
183 terest on the moneys received by the city of New Orleans from the time the same was payable.

That your exceptors are entitled to interest with an annual rest, according to the rules and principles of equity and jurisprudence; but they will content themselves with simple interest, reserving their rights to a further account when found necessary."

And on June 7, 1897, the City of New Orleans filed exceptions to the report of the master, as follows:

"Defendant excepts to that part of the report of the master wherein he expresses his opinion that the interest on taxes is a mere accessory of the principal, and belongs to the person to whom the principal belongs, and that, therefore, in his opinion, the city of New Orleans owes the school board for taxes collected and interest collected. Exceptor excepts to this on the ground that:

1st. It was no part of the master's duty, under his reference, to decide this question or to express any opinion upon the question of law involved therein, but in the event that the court overrules this exception and holds that such was his duty, then, and in that case, the City of New Orleans excepts to his conclusions of law, and asserts that, on the contrary, his conclusion is erroneous; that the interest does not follow the taxes, and does not belong to the party to whom the taxes belong.

Defendant excepts to the statement of the master that the amount reported as collected out of the school taxes from 1871 to 1878, inclusive, is due by the city to the school board or to the board of liquidation, at any time, since its collection."

On June 27, 1897, the City of New Orleans filed what it denominated an exception to the jurisdiction of the court *ratione materia* and *personæ*, therein averring "that plaintiff's petition contains no averment that the suit could have been maintained by the assignors of the claim sued upon by Mrs. M. M. Fisher in the suit which forms the basis of this action." And on July 1, 1897, the City of New Orleans filed an alleged plea in abatement to the same purport as the above-entitled exception. This exception and this plea were afterwards stricken from the files as irregular and not
184 filed in accordance with the rules. Thereafter, the City of New Orleans offered in open court to file a plea further attacking the jurisdiction of the court, which leave was refused; and, finally, on January 22, 1898, the case came on for final hearing upon the bill, answer, replication, exhibits, proof and testimony and master's report. Whereupon, February 21, 1898, the court rendered judgment in favor of the complainant and intervenors (with other details not necessary to recite) as follows:

"It is ordered, adjudged and decreed that the city of New Orleans

trustee of the special school taxes, levied and collected for the years 1871 to 1878, inclusive, be condemned to pay pl'ff and intervenors the said taxes, received and collected by her, as follows: seventy-one thousand nine hundred and thirty-eight $\frac{18}{100}$ dollars with five per cent. interest per annum on $71,139\frac{60}{100}$ from January 24th, 1881, and on $799\frac{18}{100}$ from May 11th, 1896, until paid; and it is further ordered that this bill be retained for a further accounting and such orders and decrees as may be necessary."

On April 23, 1898, the City of New Orleans filed a petition for a rehearing on numerous grounds, which was ordered filed and fixed for hearing. Pending the rehearing, the November term, 1897, of the circuit court adjourned and the April term, 1898, was opened, at which term the court passed upon the petition for rehearing, as follows:

"Whereupon and on consideration thereof, it is ordered that a rehearing in this cause be and the same is hereby refused, and the court of its own motion orders that the final decree rendered herein on February 21, 1898, be and the same is hereby amended so as to only allow interest on the amount recovered, to wit: $71,139.60, from February 21, 1898, the date of said decree, instead of from January 24, 1881, as heretofore allowed.

The clerk will note this amendment on the margin of said decree."

Subsequent to the decree and prior to the decision upon the rehearing, a plea in abatement on the ground of alienage was put in
185 by the City of New Orleans to the effect that M. M. Fisher being a citizen of Spain, is unable to prosecute this suit, and the suit should be abated, because a state of war existed between the Kingdom of Spain and the United States of America and all the subjects and citizens thereof.

There was a demurrer to this plea of alienage on various grounds, but finally in the opinion of the court a sufficient answer was made thereto by proof that the complainant Fisher was not a citizen of Spain but was a citizen of Great Britain. From the decree of the circuit court, both parties have appealed.

PARDEE, circuit judge, delivered the opinion of the court:

There are fourteen assignments of error on the part of the City of New Orleans, many of which are argumentatively stated, but which we will consider in order, disregarding those argued in the briefs but not specifically assigned.

The first assignment of error is as follows:

"It was error for the court to decree judgment against the city for any part of the taxes of 1871, for the reason that the evidence shows that no part of complainant's claims arose during the year 1871, and further that the act of the legislature which directed the city to impose a special tax of $\frac{1}{4}\%$ was passed in the year 1873; therefore could not affect the taxes of 1871.

Furthermore, it is error for the court to allow this decree against the city for taxes for 1871, for the reason that the complainant does not claim any share in the taxes of 1871, or any interest thereon

either in her original or supplemental bill, and it was error for the court to allow her more than she claimed. Consequently the amount declared due out of taxes for 1871, to wit: seven thousand eight hundred and twenty-one $\frac{17}{100}$ dollars, and the delinquent interest of taxes of 1871, nine thousand three hundred and thirty-two $\frac{81}{100}$ dollars, were allowed in error, and should be deducted."

The grounds stated in this assignment form no part of the exceptions filed to the master's report, and it can hardly be said that the judge below erred in this respect when his attention does not
186 appear to have been called to it. Under article 254 of the constitution of 1879 and under act 49 of 1880, the taxes due the school fund previous to 1879 constitute but one fund. Fisher *vs.* School Board of the City of New Orleans, 44 An., 184; Gasquet *vs.* School Board, 45 An., 342; Fisher *vs.* School Board, 48 An., 1077. The record shows that the complainants' judgments are made payable out of the school taxes levied by the city of New Orleans prior to 1879. The prayer of the bill is for a full account and for general relief, and the order of reference specifies the school taxes levied in 1871 and is not complained of. The objection, if good, which we do not admit, comes too late.

The second assignment of error is as follows:

"This being a suit for an accounting, the court erred in giving judgment against the city for money that she never collected, in that the judgment includes the sum of eleven thousand nine hundred and thirty-three $\frac{27}{100}$ dollars, which the master's report states is a discount allowed by the city to the tax-payer for payment of school taxes, and as the bill only claims and asks that the city be compelled to pay over the actual amount of cash collected, and as this money was never collected, we submit that it was error for the court to order it paid over. This being only a suit for an accounting, judgment cannot be had in the bill for anything but money actually collected."

The question raised in this assignment does not appear to have been raised by exception to the master's report, and we fail to find in the master's report any reference to the special sum of $11,933.27 as a discount allowed by the city to tax-payers for the payment of school taxes. The act of 1874, No. 41, page 78, which provided for rebates or discount on taxes paid in full prior to the 20th of March in each year, expressly provided that no discount should be made upon school taxes. The matter herein urged is probably one of the details embraced in the special accountant's report upon which the master's report was made up. We are not disposed to follow the question through the exhibits, even if counsel should point the way. The assignment of error is not well taken.

The 3d assignment of error as follows:

187 "The evidence shows that the full amount of money collected for 1874 school taxes was turned over to the school board (see testimony of Clark Steen and his report offered in evidence by complainant), and such being the case, it is urged that it was error for the court to make the city pay over any more money

of the taxes of 1874, the city having already paid over all that owes on that year. Such being the case, the amount of ,816.59 and $209.50, proportion of interest on school taxes for 3, and the proper proportion of principal for school taxes for 4 (to ascertain the amount of which a re-reference to the master ıecessary), are not due to the school board. While it is true that back taxes prior to 1879 are lumped into one fund, we urge that calling for an accounting, it is sufficient for the city to show, in ler to be discharged as far as the taxes of any particular year are ıcerned, that she has paid over the full amount of taxes due the ool board for that year, and having done this, with the taxes for 4, it is error for the court to order her to turn over any more of taxes for that year,"

ses more matter involved in the master's report, of which no nplaint was made in the exceptions filed to the report, and the ignment need only be noticed, because it contains an admission t all the back taxes prior to 1879 were lumped into one fund.

The 4th assignment of error raises the question of the complain-'s remedy at law. A general demurrer was filed to the bill, and same was overruled and no assignment of error covers the same, less this 4th assignment be so considered. The counsel for the y of New Orleans say, in support of this assignment, "a reading he judgment," which is found in the transcript, "will show your nors that it is of such a nature that by garnishment proceedings could have obtained all needed relief under that judgment, and t that was all that was required and necessary to collect anything e her by the city or anything due the school board by the city. nsequently, as she has an adequate remedy at law, it is wrong to permit her to proceed in equity." On the other side, it is said, "solicitors for complainants have been litigating during these ten years and the only relief to be had is through the ıity court."

We consider the bill as a creditors' bill to reach equities exist-; between the school board of the city of New Orleans and the y of New Orleans in which an accounting between the two ties is necessary in order to ascertain the indebtedness of the y to the city school board. No such relief can be obtained at .

The 5th assignment of error is to the effect that complainant has right to sue the city of New Orleans, because her judgments are ainst the school board only and she does not allege that the city es the school board anything.

We think the issue of indebtedness of the city of New Orleans the school board is sufficiently asserted in the bills and is clearly t at issue in the answer.

The 6th assignment of error is as follows:

"The evidence shows that in suit No. 12060 the city was gar-heed on July 12th, 1894, under a *fi. fa.* and answered under oath t she had one thousand eight hundred and ninety-three $\frac{3}{100}$ dol-s to the credit of the school fund prior to 1879 on that date, and

having paid that amount over to Mrs. Fisher under her judgment, it was error for the court not to hold that said payment to and acceptance by Mrs. Fisher, complainant herein, estopped her from traversing said garnishment, as she is doing by this proceeding, and the court should have held such payment and acceptance as an estoppel and *res judicata* concerning all collections made up to July 12, 1894."

The proposition enunciated in this assignment of error is that an issuance of execution and garnishment proceedings thereunder operate an estoppel to a creditor's bill founded on the same judgment and seeking an accounting between the judgment debtor and the garnishee. If the general proposition should be conceded, its applicability in the present case is not apparent. In our view, the garnishment proceedings shown in this record were against the treasurer of the city and *ex officio* treasurer of the school board—a stakeholder—under which at law no accounting as between the city of New Orleans and the school board could have been had.

189 The 7th assignment of error is thus stated:

"The court erred in approving the finding of the master that the interest or penalty on delinquent taxes formed a part of the taxes and should be turned over to the board. But even though this was correct (which course is not admitted) we hold that the court erred in ordering the city to pay over the penalty on the taxes which she had already paid over. In any event she should not be compelled to pay over the penalty on any taxes, except on those taxes which are still in her possession. In other words, the master's report shows twenty-three thousand one hundred and eight $\frac{3}{100}$ dollars of principal, and we submit that only the penalties on this twenty-three thousand one hundred and eight $\frac{3}{100}$ dollars should be turned over, and not the penalties on the taxes that were turned over to the board years ago."

The assignment refers to the finding of the master's report holding the city liable for interest collected upon back school taxes. The master said: "It is a question of law whether the school board is entitled to any part of the interest—I think it is. The interest as a mere accessory of the principal belongs to the same person to whom the principal belongs." Under the law the school taxes carried ten per cent. interest per annum from the day they became delinquent. It was a penalty for non-payment of the taxes. This interest, or penalty, for delayed payment of school taxes formed no part of the city's proper revenues; the city, in collecting the same, was acting as a trustee for the school board. Delay in payment of taxes operated to the prejudice, not of the city but of the school fund and its creditors. We are unable to find any authority in law or morals for the city to appropriate to itself this interest. To allow such an appropriation would be to reward the city for its own negligence in the collection of the taxes due the school fund. We fully agree with the master that "the interest as a mere accessory of the principal belongs to the same person to whom the principal belongs." The assignment argumentatively claims that

if the city is liable for the interest on taxes collected, which
190 taxes have not been paid over, it is not liable for interest on taxes which it (the city) had collected, and, when paying over the taxes, had withheld. We are unable to see any difference in principle between the two cases.

The 8th assignment of error complains of the action of the court below in striking from the records two certain documents called pleas to the jurisdiction *ratione materia et personæ*, which were filed irregularly after the case had been put at issue, and after the master's report and exceptions had been filed thereto. The certificate of counsel is not attached to these documents, and they had no proper place in the files of the court. At the same time it is to be noticed that the right to file new or amended pleadings after the pleadings have been regularly made under the rules is a matter within the discretion of the chancellor and not subject to review. Another serious objection to these alleged pleas is that, in so far as they attack the jurisdiction of the court in the original suit in the circuit court in which Mrs. Fisher recovered a judgment against the city school board, and which is the basis of this creditors' bill, it seems clear to us that the pleas are objectionable. Mattingly *vs.* Nye, 8 Wall., 370.

The 9th assignment of error does not appear to be based on any affirmative ruling of the court below. It appears that leave was asked to file a plea to the jurisdiction and an order to show cause issued, but no ruling made in the premises.

The 10th assignment is to the effect that it was error not to have allowed the plea of prescription made in the answer of the defendant, for, as it is claimed, the cause of action arose in 1873 and subsequent years, the last year being 1879, and the same was prescribed by ten years. In the case of Gasquet *vs.* The Board of City School Directors, 45 An., 342, the supreme court of Louisiana, in passing on a plea of prescription in favor of the school board, said:

"We think the pleas of prescription are not well founded. Act 36 of 1873 makes it very clear that the claims evidenced by these certificates were not payable absolutely or at any particular time.

They are payable only out of the revenues of the years
191 for which they are issued, and only when said revenues are collected and in the manner therein provided; and the act further declared that 'no writ of *fi. fa.* or mandamus shall lie for seizure of any school moneys, or to direct or enforce its paying out otherwise than in the manner and sequence required in this act.'

This law formed a part of the contracts out of which the claims arose and deprived the claimants of any legal remedy to enforce payment except out of particular revenues when actually collected and covered into the treasury.

The case is very much stronger and clearer than that of King Bridge Co. *vs.* Otoe Co., 124 U. S., 459, in which the Supreme Court of the United States held that county warrants, payable only when there are funds in the treasury applicable thereto, are not actionable until the money for its payment is collected, and, therefore, not subject to the statute of limitations except from the same time."

The principles here declared are in many respects applicable to the case in hand.

The judgments sought to be enforced in this case were rendered since 1890 and the school certificates sued on are in judgments, and this suit is brought within ten years from the rendition of the judgments. The position of the city being that of trustee, her possession of the funds in question is not as owner, and prescription does not, as a general proposition, run in favor of the trustee as long as the trust relation continues. In equity the trustee should never be allowed to acquire trust funds by limitation. Daniell's Ch., 642; Oliver *vs.* Piatt, 3 How., 411.

The 11th assignment seeks to raise again the question of jurisdiction of the circuit court in the original action in which Mrs. Fisher obtained a judgment, and needs no further consideration.

The 12th assignment is that the court erred in holding the school taxes to be a trust fund in the hands of the city. The city was collecting the school taxes for the school board and therein acting as agent, and a trust naturally resulted.

The 13th assignment of error denies the right of the complainants to claim an accounting from the city of New Orleans. This
192 objection goes to the right of the complainants to maintain this suit for an accounting which to us seems so plain that no argument is needed to sustain it.

The 14th and last assignment of error is as follows:

"It was error to order the whole fund ascertained by the master to be paid over to complainant and intervenors in this suit, because if said fund is a trust fund, it is held for the benefit of all interested in said fund, and the only part that should be paid to complainant and intervenors is their proportion of same; in other words, it was error for the court to ignore the rights of other certificate-holders not party to this suit, and who were not notified by publication, or cited herein. And to ascertain what proportion of the fund should go to the complainant and intervenors herein, a re-reference to the master is necessary."

To this, all that is necessary to answer is that the suit is one brought for the benefit of complainants and others similarly situated; numerous complainants who desire to participate in the expenses of suit have already intervened, and if there are others who desire to come in before the final distribution of any funds realized, the circuit court will be open to them.

John Fisher, natural tutor, etc., and others, complainants in the court below, assign as error on their cross-appeal, first: that a new trial having been refused after the term in which decree was rendered, the circuit court was without jurisdiction under equity rule No. 88 and other equity rules governing the practice of the court, to amend its decree; second: that, under the equity jurisprudence, as well as under the Louisiana law, complainant and intervenors were entitled to a decree carrying interest as was allowed by the original decree.

The record shows that after the decree entered at the November term and during that term a petition for rehearing was filed, sub-

mitted and taken under advisement; that pending decision of the matter the November term of the court was adjourned and the following April term commenced. As we understand the practice, the application for rehearing submitted and taken under advisement hindered the decree of the court as entered from becoming
193 final, by the adjournment of the court, and it was competent for the judge at the following term of court to grant a full rehearing or otherwise modify his decree. Goddard *vs.* Ordway, 101 U. S., 745.

Whether interest should be allowed upon the amounts decreed against the city as directed in the original decree presents a more important question. The master found that the school taxes and interest on school taxes collected by the city of New Orleans for the years prior to 1879 and not paid over to the school board and now owing, amounted to the sum of $71,938.78, and of this sum the lower court gave originally a decree with 5 % interest on $71,139.60, from January 24, 1881, and on $799.18 from May 11, 1896, until paid. The master's report is silent as to the dates on which the city of New Orleans had collected the several sums found due and owing by it to the school board, but the exhibits filed with the report show that all of the sum of $71,139.60 was collected by the city prior to January 24, 1881, and the sum of $799.18 prior to May 8, 1897. It is not disputed that the amounts collected by the city as interest on delinquent school taxes has been used and appropriated by the city in its own affairs. The general rule in equity is that a trustee who employs trust funds to his own advantage shall be charged interest. Perry on Trusts, sec. 468; Adams' Equity Mar., p. 54.

The Civil Code of Louisiana, section 3015, is as follows:

"The attorney is answerable for the interest of any sum of money he has employed to his own use, from the time he has so employed it; and for that of any sum remaining in his hands from the day he becomes a defaulter by delaying to pay it over."

It thus appears that by general equity principles and by the Louisiana Civil Code, the City of New Orleans, as trustee, should be charged with interest. If the case is one showing that the City of New Orleans was a gross delinquent and an unfaithful trustee, equity would further require that compound interest should be allowed upon all sums collected and retained by it with six months' rests.

The interest claimed by the exception filed to the master's
194 report and allowed in the original decree, and now claimed upon appeal, is five per cent., the legal rate of interest fixed in Louisiana on all debts from the time they become due, unless otherwise stipulated. The decree appealed from, as amended by the judge *ex propria motu*, when the petition for rehearing was refused, allows no interest prior to the date of the decree. The amendment appears to have been suggested by the master's report to the effect that at the date thereof the city then owed the school board for taxes collected and for interest on taxes collected $71,938.78. An inspection of the report and the exhibit shows, however, that the

moneys so found due have been for a long time in the hands of the city of New Orleans. That the master's report allowed no interest on these sums so held by the city was a specific ground of exception on the part of complainants to the master's report, and exceptors said: "That your exceptors are entitled to interest with an annual rest according to the rules and principles of equity and jurisprudence; but they will content themselves with simple interest, reserving their rights to a further account when found necessary."

Under all the circumstances, as shown by the record, we are of opinion that an allowance of five per cent. interest on the amounts collected by the city prior to January 24, 1881, and held and employed in the city's affairs since that date, would be just and equitable, and that the decree, as originally rendered by the circuit court, was correct except as to interest on the sum of $799.18, which was only allowable from May 9, 1897, instead of from May 11, 1896.

The decree appealed from is amended so as to allow five per cent. interest on the sum of $71,131.60 from January 24, 1881, and on the sum of $799.18 from May 8, 1897, and as amended, the said decree is affirmed with costs against the City of New Orleans.

195 *Clerk's Certificate.*

United States Circuit Court of Appeals for the Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 196 pages, numbered from *a* to 195, inclusive, contain a true copy of the record and all proceedings had, including the opinion of the court, in the case of The City of New Orleans, appellant, *vs.* John Fisher, tutor, etc., *et al.*, appellees, No. 747, as the same remains upon the files and records of said United States circuit court of appeals.

Seal United States Circuit Court of Appeals, Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 13th day of June, A. D. 1899.

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

196 UNITED STATES OF AMERICA, *ss*:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

Being informed that there is now pending before you a suit in which The City of New Orleans is appellant and John Fisher, tutor, &c., *et al.* are appellees, on appeal and cross-appeal, which suit was removed into the said circuit court of appeals by virtue of appeals from the circuit court of the United States for the eastern district of

Louisiana, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by
the said circuit court of appeals and removed into the Su-
197 preme Court of the United States, do hereby command you
that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

198 [Endorsed:] Supreme Court of the United States, October term, 1898. No. 747. The City of New Orleans *vs.* John Fisher, tutor, &c., *et al.* Writ of certiorari. Received June 1, 1899. J. M. McKee, cl'k.

United States Circuit Court of Appeals, Fifth Circuit.

In obedience to the command of the within writ and by direction of the judges of the United States circuit court of appeals for the fifth circuit, I, J. M. McKee, clerk of said court, do as a return to said writ transmit herewith to the honorable the Supreme Court of the United States a true, full, and perfect transcript of the record, with all proceedings had, in the cause of The City of New Orleans, appellant, *vs.* John Fisher, tutor, &c., *et al.*, appellees, as fully and completely as the same remains of record and on file in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, in the city of New Orleans, on this the 29th day of June, A. D. 1899.

(Seal United States Circuit Court of Appeals, Fifth Circuit.)

J. M. McKEE,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Endorsed on cover: File No., 17,391. U. S. C. C. of appeals, 5th circuit. Term No., 281. The City of New Orleans, petitioner, *vs.* John Fisher, tutor, &c., *et al.* Writ of certiorari and return. Filed July 3, 1899.